

REVISION TO THE STATE OF KANSAS AIR QUALITY STATE IMPLEMENTATION PLAN

Plan Revision to Incorporate Amendments to:

K.A.R. 28-19-11



Our Vision – Healthy Kansans living in safe and sustainable environments.

Division of Environment
Bureau of Air
(785)296-6024

November 2016

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SECTION A:
**DESCRIPTION OF MATERIALS
REQUIRED FOR PLAN SUBMITTAL**

Administrative Material – 40 C.F.R. Part 51, Appendix V, Section 2.1

Appendix V Section 2.1	Requirement	Documentation Provided in Submittal	Submittal Section
(a)	Formal letter of submittal	Letter of Submittal	Preface
(b)	Evidence the plan has been adopted and the effective date	Secretary's Declaration of Adoption: K.A.R. 28-19-11.	B
(c)	Legal authority to adopt and implement plan	Kansas Statutes Annotated (K.S.A.) Chapter 65, Article 30	C
(d)	Copy of actual regulation or document, including indication of the changes made	K.A.R. 28-19-11 as published in the <i>Kansas Register</i> on October 27, 2016. Stamped and dated copies of Department of Administration and Attorney General's Approval.	D
(e)	Evidence the State has followed all procedural requirements	Report of the Hearing Officer	E
(f)	Evidence that public notice was provided	Notice of Hearing published in the <i>Kansas Register</i> on August 11, 2016. Formal and electronic notice to: EPA and District Offices to post in regions. KDHE – BOA Website of Public Notice.	F
(g)	Certification that public hearing was held as per information in public notice	Report of the Hearing Officer Public Notice Documentation	E, F
(h)	Compilation of public comments and responses thereto	Attachments III and V to the Report of the Hearing Officer	E

Technical Support – 40 C.F.R. Part 51, Appendix V, Section 2.2

Appendix V Section 2.2	Requirement	Documentation Provided in Submittal	Submittal Section
(a)	Identification of all relevant pollutants affected by the plan.	Refer to response.	G
(b)	Identification of the location of affected sources under the plan.	Refer to response.	G
(c)	Quantification of the changes in the plan's allowable emissions.	N/A.	G
(d)	Demonstration that the ambient air quality will not deteriorate, etc.	Refer to response.	G
(e)	Modeling information.	N/A	G
(f)	Evidence that emission limits are continuous emission reduction technology-based.	N/A.	G
(g)	Evidence that plan contains emission limits, etc.	N/A.	G
(h)	Compliance and enforcement provisions.	Refer to response.	G
(i)	Special economic or technological justifications as needed, or explanation of why justification is not needed.	N/A.	G

SECTION B:
EVIDENCE THAT PLAN REVISION
HAS BEEN ADOPTED, AND
EFFECTIVE DATE OF ADOPTED
PLAN REVISION



Susan Mosier, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

DECLARATION OF ADOPTION

I, Susan Mosier, MD, Secretary of the Kansas Department of Health and Environment, hereby adopt the following Article 19 permanent air quality regulation:

KAR 28-19-11

This regulation has been approved by the Secretary of Administration as to organization, style, orthography and grammar and by the Attorney General as to form and legality and as being within the jurisdiction of the Secretary of Health and Environment.

This administrative act of adoption I hereby certify as being an official action of my Office of Secretary of the Kansas Department of Health and Environment on the 13th day of October, 2016.

Susan Mosier, MD
Secretary of Health and Environment

SECTION C:
AUTHORIZING STATUTES

State of Kansas Air Quality Statutes
Chapter 65.--PUBLIC HEALTH
Article 30.--AIR QUALITY CONTROL

65-3001. **Title of act.** K.S.A. 65-3002, 65-3003, 65-3005 through 65-3013 and 65-3015 through 65-3020 and K.S.A. 65-3008a, 65-3008b and 65-3024 through 65-3028, and amendments thereto, shall be known and may be cited as the Kansas air quality act. **History:** L. 1967, ch. 347, § 1; L. 1970, ch. 261, § 1; L. 1993, ch. 13, § 1; March 25.

65-3002. **Definitions.** As used in this act, unless the context clearly requires otherwise:

(a) "Air contaminant" means dust, fumes, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof, but not including water vapor or steam condensate.

(b) "Air contamination" means the presence in the outdoor atmosphere of one or more air contaminants.

(c) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is, or tends significantly to be, injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property, or would contribute to the formation of regional haze.

(d) "Alter" means any physical change in, or change in the method of operation of, an air contaminant emission stationary source which increases the amount of any regulated air pollutant emitted by such source or which results in the emission of any regulated air pollutant not previously emitted.

(e) "Emission" means a release into the outdoor atmosphere of air contaminants.

(f) "Deciview" means an atmospheric haze index that expresses changes in visibility conditions as defined in 40 C.F.R. § 51.301 as in effect on July 1, 2005.

(g) "Facility" means any building, structure, machine, equipment, device or installation (or group of buildings, structures, machines, equipment, devices or installations), whether temporary or permanent, located on one or more contiguous or adjacent properties and under common control of the same person (or persons under common control). Such term shall not include locomotives, diesel trucks or truck tractors unless otherwise required by the federal clean air act, as amended in November 1990.

(h) "Modify" or "modification," when used in conjunction with an approval or permit action, means an amendment to an existing approval or permit initiated by the permittee. When used to describe a change in any air contaminant emission stationary source, "modify" shall have the same meaning as the term "alter."

(i) "Permittee" means the holder of an approval or the holder of a permit and includes both the owner and the operator of any approved or permitted air contaminant emission source.

(j) "Person" means any individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state or federal government, trust, estate or any other legal entity.

(k) "Regional haze" means visibility impairment, measured in deciviews, occurring over a large geographic area caused by the cumulative emissions of gaseous and particulate air contaminants from numerous sources.

(l) "Reopen" means to seek an amendment to an existing approval or permit initiated by any person other than the permittee.

(m) "Secretary" means the secretary of health and environment.

(n) "Stationary source" means any building, structure, facility or installation which emits or may emit any air contaminant. **History:** L. 1967, ch. 347, § 2; L. 1970, ch. 261, § 2; L. 1974, ch. 352, § 135; L. 1993, ch. 13, § 2; L. 2006, ch. 84, § 1; July 1.

65-3003. Responsibility of secretary; administration. The responsibility for air quality conservation and control of air pollution is hereby placed with the secretary of health and environment. The secretary shall administer this act through the division of environment.

History: L. 1967, ch. 347, § 3; L. 1970, ch. 261, § 3; L. 1974, ch. 352, § 136; July 1.

65-3005. Powers of the secretary. (a) The secretary shall have the power to:

(1) Adopt, amend and repeal rules and regulations implementing and consistent with this act.
(2) Hold hearings relating to any aspect of or matter in the administration of this act concerning air quality control, and in connection therewith, compel the attendance of witnesses and the production of evidence.

(3) Issue such orders, permits and approvals as may be necessary to effectuate the purposes of this act and enforce the same by all appropriate administrative and judicial proceedings.

(4) Require access to records relating to emissions which cause or contribute to air pollution.

(5) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution originating in Kansas that affects air quality in Kansas or in other states or both.

(6) Adopt rules and regulations governing such public notification and comment procedures as authorized by this act.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this act.

(8) (A) Encourage local units of government to handle air pollution problems within their respective jurisdictions and on a cooperative basis; (B) provide technical and consultative assistance therefor; and (C) enter into agreements with local units of government to administer all or part of the provisions of the Kansas air quality act in the units' respective jurisdictions.

(9) Encourage and conduct studies, investigations and research relating to air contamination and air pollution and their causes, effects, prevention, abatement and control.

(10) Encourage air contaminant emission sources to voluntarily implement strategies, including the development and use of innovative technologies, market-based principles and other private initiatives to reduce or prevent pollution.

(11) Determine by means of field studies and sampling the degree of air contamination and air pollution in the state and the several parts thereof.

(12) Establish ambient air quality standards for the state as a whole or for any part thereof.

(13) Collect and disseminate information and conduct educational and training programs relating to air contamination and air pollution.

(14) Advise, consult and cooperate with other agencies of the state, local governments, industries, other states, interstate or interlocal agencies, and the federal government, and with interested persons or groups.

(15) Accept, receive and administer grants or other funds or gifts from public and private entities, including the federal government, for the purpose of carrying out any of the functions of this act. Such funds received by the secretary pursuant to this section shall be deposited in the state treasury to the account of the department of health and environment.

(16) Enter into contracts and agreements with other state agencies or subdivisions, local governments, other states, interstate agencies, the federal government or its agencies or private entities as is necessary to accomplish the purposes of the Kansas air quality act.

(17) Conduct or participate in intrastate or interstate emissions trading programs or other programs that demonstrate equivalent air quality benefits for the prevention, abatement and control of air pollution in Kansas or in other states or both.

(18) Prepare and adopt a regional haze plan as may be necessary to prevent, abate and control air pollution originating in Kansas that affects air quality in Kansas or in other states or both. Any regional haze plan prepared by the secretary shall be no more stringent than is required by 42 U.S.C. § 7491.

(19) Participate in the activities of any visibility transport commission established under 42 U.S.C. § 7492. The secretary shall report to the governor and the legislature on the activities of any such visibility transport commission annually.

(b) It is a policy of the state to regulate the air quality of the state and implement laws and regulations that are applied equally and uniformly throughout the state and consistent with those of the federal government.

(1) The secretary shall have the authority to promulgate rules and regulations to establish standards to ensure that the state is in compliance with the provisions of the federal clean air act, as amended (42 U.S.C. section 7401 et seq.). The standards so established shall not be any more stringent, restrictive or expansive than those required under the federal clean air act, as amended, nor shall the rules and regulations be enforced in any area of the state prior to the time required by the federal clean air act. If the secretary determines that more stringent, restrictive or expansive rules and regulations are necessary, the secretary may implement the rules and regulations only after approval by an act of the legislature. The restrictions of this subsection shall not apply to the parts of the state implementation plan developed by the secretary to bring a nonattainment area into compliance when needed to have a United States environmental protection agency approved state implementation plan.

(2) For any application for a permit required by federal or state law, the secretary shall not deny or delay the issuance of such permit when the requirements of this act have been met.

History: L. 1967, ch. 347, § 5; L. 1970, ch. 261, § 5; L. 1974, ch. 352, § 137; L. 1993, ch. 13, § 3; L. 2006, ch. 84, § 2; L. 2009, ch. 141, § 23; May 28.

65-3006. Same; publication and enforcement of regulations; employment of personnel; services. The secretary shall:

(a) Publish and enforce the rules, regulations and standards promulgated hereunder. The secretary shall furnish a copy of such rules, regulations or standards adopted hereunder to any citizen upon request.

(b) Employ such professional, technical and other staff, and provide such technical, scientific and other services as may be required, including laboratory facilities, for the purpose of effectuating the provisions of this act from funds appropriated and available for the purposes of this act. **History:** L. 1967, ch. 347, § 6; L. 1970, ch. 261, § 6; L. 1974, ch. 352, § 138; L. 1975, ch. 312, § 10; July 1.

65-3007. Air contaminant sources; classification; monitoring; reporting. (a) The secretary, by rule and regulation, shall classify air contaminant sources which, in the secretary's judgment, may cause or contribute to air pollution, according to levels and types of emissions and

other characteristics which relate to air pollution and may require reporting for any such class or classes. The classifications promulgated by the secretary shall be made to apply to the state as a whole or to any designated area of the state, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(b) The secretary shall require air contaminant emission sources to monitor emissions, operating parameters, ambient impact of any source emissions or any other parameters deemed necessary by the secretary. The secretary may require air contaminant emission sources to keep records and make reports consistent with the purposes of this act.

(c) Any person operating or responsible for the operation of air contaminant sources of any class for which the rules and regulations of the secretary require reporting shall make reports containing information as may be required by the secretary concerning location, size and height of contaminant outlets, processes employed, fuels used and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled. **History:** L. 1967, ch. 347, § 7; L. 1970, ch. 261, § 7; L. 1974, ch. 352, § 139; L. 1975, ch. 312, § 11; L. 1993, ch. 13, § 4; March 25.

65-3008. Approvals and permits for emission stationary sources. (a) No person shall construct, own, operate, install, alter or use any air contaminant emission stationary source which, in accordance with rules and regulations, the secretary finds may cause or contribute to air pollution, unless an appropriate approval or permit has been issued for the source by the secretary under this act. Approvals or permits issued by the secretary may be subject to conditions consistent with the purposes of this act and rules and regulations promulgated under this act.

(b) The secretary shall require that applications for approvals and permits, and renewals thereof, under this act shall be accompanied by application fees and such plans, specifications, compliance plans or other information as the secretary deems necessary. Applications shall be submitted on forms provided by the secretary and shall be signed by a responsible official of the source, who shall certify the accuracy of the information submitted.

(c) The issuance or holding of an approval or permit shall not convey any property right or exclusive privilege to the holder thereof.

(d) Without any further action on the part of the secretary, an approval or a permit shall become void and without effect on its expiration date unless a completed application form and any required fee are filed with the secretary on or before the expiration date of the approval or the permit. For purposes of this subsection, the secretary may specify by rule and regulation an amount of time prior to the expiration date of an operating permit by which a complete application form and any required fee must be filed with the secretary in order to be considered timely filed. The secretary may provide for a grace period by rule and regulation.

(e) The secretary may issue by rule and regulation a general approval or permit covering numerous similar sources. Any general approval or permit shall comply with all requirements applicable to approvals or permits under this act. Any source covered by a general approval or permit must apply to the secretary and receive authority to operate under the general approval or permit.

(f) The secretary may fix, charge and collect fees for approvals and permits, and the renewal thereof, to cover all or any part of the cost of administering the provisions of [the] Kansas air quality act, other than K.S.A. [65-3027](#), and amendments thereto. The secretary shall adopt rules and regulations fixing such fees. The fees shall be deposited in the state treasury and credited to the air quality fee fund established in K.S.A. [65-3024](#), and amendments thereto, except that if all

or any portion of the regulatory services for which a fee is collected under this section is performed by a county, city-county or multicounty health department, that portion of such fee which pertains to such services, as determined by the secretary, shall be credited to the local air quality control authority regulation services fund, which is hereby created in the state treasury, and shall be paid from such fund to such local air quality control authority. **History:** L. 1967, ch. 347, § 8; L. 1970, ch. 261, § 8; L. 1974, ch. 352, § 140; L. 1981, ch. 250, § 1; L. 1983, ch. 286, § 3; L. 1984, ch. 313, § 126; L. 1993, ch. 13, § 5; L. 2014, ch. 30, § 3; July 1.

65-3008a. Same; public comment and hearing; review. (a) No permit shall be issued, modified, renewed or reopened without first providing the public an opportunity to comment and request a public hearing on the proposed permit action. The request for a public hearing on the issuance of a permit shall set forth the basis for the request and a public hearing shall be held if, in the judgment of the secretary, there is sufficient reason.

(b) The secretary shall affirm, modify or reverse the decision on such permit after the public comment period or public hearing, and shall affirm the issuance of any permit the terms and conditions of which comply with all requirements established by rules and regulations promulgated pursuant to the Kansas air quality act. Any person who participated in the public comment process or the public hearing who otherwise would have standing under K.S.A. [77-611](#), and amendments thereto, shall have standing to obtain judicial review of the secretary's final action on the permit pursuant to the Kansas judicial review act in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final permit decision, including the permit application and any addenda or amendments thereto, the permit summary, the draft permit, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the permit application, all responses by the applicant or permit holder to any written comments or testimony, the secretary's response to the public comments and testimony and the final permit.

(c) When determined appropriate by the secretary, the procedures set out in subsection (a) may be required prior to the issuance, modification, renewal or reopening of an approval. **History:** L. 1993, ch. 13, § 6; L. 2006, ch. 79, § 1; L. 2009, ch. 141, § 24; L. 2010, ch. 17, § 142; July 1.

65-3008b. Same; suspension, revocation, denial, modification, issuance. (a) The secretary may suspend or revoke an approval or a permit if the permittee has violated any provision of the approval or the permit, any provision of this act or any rule and regulation adopted under this act and applicable to the permitted source.

(b) As applicable to the source for which the approval or permit is sought, the secretary may deny an approval or permit, or a renewal thereof, if the applicant fails to: (1) Submit a complete application; or (2) submit an application fee.

(c) The secretary may deny a permit for any proposed new stationary source if the owner or operator of such a source fails to demonstrate to the satisfaction of the secretary that any other stationary source owned or operated by such person, or by any entity controlling, controlled by or under common control with such person, in this state is in compliance, or meeting a schedule for compliance, with all applicable emission limitations and standards under this act and the federal clean air act, and amendments thereto.

(d) The secretary may modify or reopen an approval or a permit for cause. The secretary shall reopen a permit whenever requirements under this act become applicable to a permitted source and three or more years remain on the original term of the permit. Any permit revision incorporating a requirement adopted by the secretary shall be effective as soon as practicable, but not later than 18 months after the promulgation of the requirement by the United States environmental protection agency.

(e) Within 15 days after the issuance of a notice of intent to take any action authorized by subsection (a), (b), (c) or (d), or within 15 days after the secretary's written decision to affirm, modify or reverse a permit decision pursuant to subsection (b) of K.S.A. [65-3008a](#), the permittee may file a request for a hearing with the secretary. Each such notice of intent shall specify the provision of this act or rule and regulation allegedly violated, the facts constituting the alleged violation and the secretary's intended action. Each notice of intent or written decision to affirm, modify or reverse a permit decision shall state the permittee's right to request a hearing. Such hearing shall be conducted in accordance with the Kansas administrative procedure act.

(f) The filing of a request by the permittee for an approval or permit modification, revocation or amendment, or the filing by the permittee of a notification of planned changes or anticipated noncompliance, does not stay any approval or permit condition.

(g) No permit shall be issued, modified, amended, revised or renewed unless the United States environmental protection agency has certified that such permit complies with the requirements of the federal clean air act, except that a permit may be issued if the United States environmental protection agency has not notified the secretary of the United States environmental protection agency's decision within 45 days after receipt of the proposed permit by such agency.

(h) The secretary shall issue or deny the permit (including requests for modification or to reopen the permit):

(1) Within three years of the date the United States environmental protection agency approves the state permitting program pursuant to the provisions of the federal clean air act, as amended in November 1990, for permit applications submitted within the first full year after such date;

(2) pursuant to the time schedule provided by title IV (acid rain) of the 1990 amendments to the federal clean air act, for air contaminant emission sources subject to that title; or

(3) within 18 months after receiving a complete application, in all other cases.

(i) Failure of the secretary to issue or deny the permit, or grant or deny a request to modify or reopen the permit, within the period stated in subsection (h) shall not result in the default issuance of a permit, permit amendment, permit modification or permit renewal nor shall such failure result in any other entity assuming jurisdiction to act on the permit or the request. **History:** L. 1993, ch. 13, § 7; March 25.

[65-3009. Inspections.](#) The secretary may designate competent representatives who may enter and inspect any property, premise or place at any reasonable time for the purpose of investigating either an actual or possible source of air pollution or of ascertaining the state of compliance with this act and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the secretary who requests entry for purposes of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. If requested, the owner or operator of the premises shall receive a report setting forth levels of emissions and any other facts found which relate to compliance status. **History:** L. 1967, ch. 347, § 9; L. 1970, ch. 261, § 9; L. 1974, ch. 352, § 141; July 1.

65-3010. Emission control requirements. (a) The secretary shall establish emission control requirements, and requirements for open burning (including appropriate prohibition thereof). Such requirements may be either for such areas as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the purposes of this act and in order to take necessary or desirable account of varying local conditions. Any emission which does not conform to a requirement in force pursuant to this subsection shall constitute a violation of this act.

(b) Every local air quality conservation program that is established pursuant to K.S.A. **65-3016**, as amended, shall be in compliance with the rules and regulations set forth for that area by the secretary.

(c) Variations from the requirements of subsection (b) of this section may be included in a local air quality conservation program only after approval by the secretary, following demonstration to the satisfaction of the secretary that the proposed requirements are not less stringent than the standards and requirements established by the secretary and are otherwise consistent with the purposes of this act. Any requirement placed in force pursuant to this subsection shall be preceded by public hearing. The secretary, upon evidence that conditions have changed or that additional or other information is relevant to a decision with respect to the emission control or open burning requirements concerned may, after public hearing, withdraw any approval previously given to a local requirement pursuant to this subsection.

(d) The secretary shall establish reasonable ambient air quality standards for the state as a whole, or any part thereof, and shall require the emission control requirements of any local program to be consistent with such standards in addition to meeting any other requirements pursuant to this section. **History:** L. 1967, ch. 347, § 10; L. 1970, ch. 261, § 10; L. 1974, ch. 352, § 142; July 1.

65-3011. Enforcement; procedure. (a) If the secretary or the director of the division of environment finds that any person has violated any provision of any approval, permit or compliance plan or any provision of this act or any rule and regulation promulgated under this act, the secretary may issue an order finding such person in violation of the act and directing the person to take such action as necessary to correct the violation. Any order issued shall specify the length of time after receipt of the order during which the person must correct the violations.

(b) Any person to whom an order is issued pursuant to subsection (a) may request a hearing within 15 days after service of the order. Hearings before the secretary shall be conducted in accordance with the Kansas administrative procedure act. **History:** L. 1967, ch. 347, § 11; L. 1970, ch. 261, § 11; L. 1974, ch. 352, § 143; L. 1988, ch. 356, § 201; L. 1993, ch. 13, § 9; March 25.

65-3012. Action to protect health or environment; judicial review procedures. (a) Upon receipt of evidence that emissions from an air pollution source or combination of air pollution sources presents: (1) An imminent and substantial endangerment to public health or welfare or to the environment; or (2) for an imminent or actual violation of this act, any rules and regulations adopted under this act, any orders issued under this act or any permit conditions required by this act, the secretary may issue a temporary order not to exceed seven days in duration, directing the owner or operator, or both, to take such steps as necessary to prevent the act or eliminate the practice.

(b) Upon issuance of the temporary order, the secretary may commence an action in the district court to enjoin acts or practices specified in subsection (a) or request the attorney general or appropriate county or district attorney to commence an action to enjoin those acts or practices.

(c) The secretary may bring suit in any court of competent jurisdiction to immediately restrain the acts or practices specified in subsection (a). An action for injunction under this subsection shall have precedence over other cases in respect to order of trial.

(d) The owner or operator, or both, aggrieved by an order of the secretary issued pursuant to this section shall be immediately entitled to judicial review of such agency action by filing a petition for judicial review in district court. The aggrieved party shall not be required to exhaust administrative remedies. A petition for review under this subsection shall have precedence over other cases in respect to order of trial. **History:** L. 1967, ch. 347, § 12; L. 1970, ch. 261, § 12; L. 1974, ch. 352, § 144; L. 1993, ch. 13, § 12; L. 2009, ch. 141, § 25; May 28.

65-3013. Variances; hearing. (a) Any person who owns or is in control of any plant, building, structure, process or equipment may apply to the secretary for a variance from rules and regulations governing the quality, nature, duration or extent of emissions. The application shall be accompanied by such information and data as the secretary may reasonably require. The secretary may grant such variance if the secretary finds that:

(1) The emissions occurring or proposed to occur do not endanger or tend significantly to endanger human health or safety; and

(2) Compliance with the rules and regulations from which variance is sought would produce serious hardships without equal or greater benefits to the public.

(b) No variance shall be granted pursuant to this section except after public hearing on due notice and until the secretary has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(c) Any variance or renewal thereof shall be granted within the requirements of subsection (a) and for time periods and under conditions consistent with the reasons therefor, and within the following limitations:

(1) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the air pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available and subject to the taking of any substitute or alternate measures that the secretary may prescribe.

(2) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as the secretary finds is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(3) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in subsections (c)(1) and (2), it shall be for not more than one year.

(d) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the secretary on account of the variance, no renewal thereof shall be granted, unless following public hearing on the complaint on due notice, the secretary finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least 60 days prior to the expiration of the variance. Immediately upon receipt of an application

for renewal the secretary shall give public notice of such application in accordance with rules and regulations of the secretary.

(e) A variance or renewal shall not be a right of the applicant or holder thereof but shall be in the discretion of the secretary. Within 15 days after the secretary's written decision to grant or deny a variance or renewal thereof, the applicant or holder of a variance or renewal may file a request for a hearing with the secretary. Such hearing shall be conducted in accordance with the Kansas administrative procedure act. However, any person who participated in the public comment process or the public hearing or who otherwise would have standing under K.S.A. [77-611](#), and amendments thereto, and is adversely affected by any final action of the secretary pursuant to this section shall have standing to obtain judicial review of the secretary's final action on the variance or renewal in the court of appeals. Any such person other than the applicant for or holder of the permit shall not be required to have exhausted administrative remedies in order to be entitled to review. The court of appeals shall have original jurisdiction to review any such final agency action. The record before the court of appeals shall be confined to the agency record for judicial review and consist of the documentation submitted to or developed by the secretary in making the final variance or renewal decision, including the variance or renewal application and any addenda or amendments thereto, the variance or renewal summary, the draft variance or renewal, all written comments properly submitted to the secretary, all testimony presented at any public hearing held on the variance or renewal application, all responses by the applicant or holder of a variance or renewal to any written comments or testimony, the secretary's response to the public comments and testimony and the final variance or renewal.

(f) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of K.S.A. [65-3012](#), and amendments thereto, to any person or any person's property. **History:** L. 1967, ch. 347, § 13; L. 1970, ch. 261, § 13; L. 1974, ch. 352, § 145; L. 1986, ch. 318, § 93; L. 1988, ch. 356, § 202; L. 2006, ch. 79, § 2; April 13.

[65-3015. Records and information open; trade secret exception.](#) (a) Except as provided in subsection (b), any records, reports or information obtained pursuant to this act shall be available to the public.

(b) Upon a showing satisfactory to the secretary by any person that records, reports or information, or a particular part thereof (other than emission data), to which the secretary has access under this act, if made public, would divulge methods or processes entitled to protection as trade secrets of such person under the uniform trade secrets act (K.S.A. [60-3320](#) et seq., and amendments thereto), the secretary shall consider such record, report or information, or particular portion thereof, confidential, except that: (1) Such record, report or information may be disclosed to officers, employees or authorized representatives of the United States government concerned with carrying out responsibilities under the federal clean air act and amendments thereto; and (2) this subsection shall not apply to any provision in any air quality approval or permit issued by the secretary and the public shall have access to such approvals and permits in their entirety. **History:** L. 1967, ch. 347, § 15; L. 1970, ch. 261, § 15; L. 1973, ch. 254, § 1; L. 1974, ch. 352, § 147; L. 1993, ch. 13, § 13; L. 2005, ch. 67, § 7; July 1.

[65-3016. Local air quality conservation programs.](#) Any city, county, city and county, or any combination of two (2) or more cities, counties or cities and counties are authorized to conduct tests and surveys to determine the degree of purity of the air within its jurisdiction, and may request

consultation, technical assistance and cooperation from the secretary in conducting such tests and surveys. If such tests and surveys indicate that unsatisfactory air quality exists, is likely to exist or is likely to occur, the governing body of said city or county shall have the authority, upon approval of the secretary, to establish a local air quality conservation authority: *Provided*, That no local air quality conservation authority shall be so approved, except after a public hearing as provided in this act. Any local air quality conservation authority which was in existence prior to May 1, 1967, may apply to the secretary for approval as a local air quality conservation authority hereunder. In approving or disapproving the formation of a local air quality conservation authority, the secretary shall determine: (1) The need for a local air quality conservation authority in the jurisdiction proposed; (2) the likely ability of the local air quality conservation authority, as proposed, to maintain satisfactory air quality in its jurisdiction; and (3) whether or not the jurisdiction of the proposed local air quality conservation authority completely contains the affected area.

Local air quality control authorities shall have authority to enforce the rules, regulations and standards adopted by the secretary and to establish such additional rules, regulations and standards as necessary to maintain satisfactory air quality within their jurisdiction: *Provided*, That any rule, regulation or standard established by a local air quality conservation authority pertaining to health hazard shall be in compliance with the rules and regulations set forth for that area by the secretary: *Provided further*, That until the secretary shall adopt rules, regulations and standards respecting any area within the jurisdiction of a local air quality conservation authority, the rules, regulations and standards of such local authority respecting said area or areas shall have full force and effect without approval thereof by the secretary.

Upon the establishment of a local air quality conservation authority, such authority and the secretary shall have concurrent jurisdiction over the local area with power and authority to maintain adequate air quality in accordance with the rules, regulations and standards adopted by the secretary.

When two (2) or more cities, two (2) or more counties or a city and a county, or any combination thereof, are affected by a common air mass of unsatisfactory quality and the respective local air quality control authorities, if such exist, are for any reason unable to agree upon a solution or settlement to such air quality problem, the secretary shall, after review and investigation, render decisions and make findings in settlement thereof. **History:** L. 1967, ch. 347, § 16; L. 1970, ch. 261, § 16; L. 1974, ch. 352, § 148; July 1.

65-3017. Motor vehicle pollution. (a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate, and in furtherance of the purposes of this act, the secretary may provide by rules and regulations for the control of emissions from motor vehicles. Such rules and regulations may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any rules or regulations pursuant to this section shall be consistent with provisions of federal law or regulations, if any, relating to control of emissions from the vehicles concerned. The secretary shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(b) As used in this section "motor vehicle" shall have the same meaning as in K.S.A. [8-1437](#).

History: L. 1967, ch. 347, § 17; L. 1970, ch. 261, § 17; L. 1974, ch. 352, § 149; L. 1975, ch. 33, § 8; L. 1976, ch. 52, § 4; July 1.

65-3018. Administrative fines. (a) The secretary or the director of the division of environment, upon a finding that a person has violated any provision of K.S.A. 65-3025 and amendments thereto, may impose a penalty not to exceed \$10,000 which shall constitute an actual and substantial economic deterrent to the violation for which it is assessed. In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(b) No penalty shall be imposed pursuant to this section except after notice of violation and opportunity for hearing upon the written order of the secretary or the director of the division of environment issued to the person who committed the violation. The order shall state the violation, the penalty to be imposed and the right to request a hearing thereon. The request for hearing shall be in writing, directed to the secretary and filed with the secretary within 15 days after service of the order. Hearings under this section shall be conducted in accordance with the Kansas administrative procedure act.

(c) Nothing in this act shall be construed to abridge, limit or otherwise impair the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefor. **History:** L. 1967, ch. 347, § 18; L. 1970, ch. 261, § 18; L. 1974, ch. 352, § 150; L. 1993, ch. 13, § 14; March 25.

65-3019. Application of act; limitations. Nothing in this act shall be construed to:

(a) Grant the secretary any jurisdiction or authority with respect to air contamination existing solely within commercial and industrial plants, works and shops.

(b) Affect the relations between employers and employees.

(c) Supersede or limit the applicability of any law or ordinance relating to industrial health, safety or sanitation. **History:** L. 1967, ch. 347, § 19; L. 1970, ch. 261, § 19; L. 1974, ch. 352, § 151; July 1.

65-3020. Severability. If any clause, paragraph, subsection or section of this act shall be held invalid or unconstitutional, it shall be conclusively presumed that the legislature would have enacted the remainder of this act without such clause, paragraph, subsection or section. **History:** L. 1967, ch. 347, § 20; May 2.

65-3021. Power generation facility; impact upon air quality; definitions. As used in this act the following terms shall have the meanings ascribed to them herein: (a) "Power generation facility" means any physical plant used for the production or generation of electricity, or coal gasification facility.

(b) "Secretary" means the secretary of health and environment.

(c) "Person" means any individual, company, corporation, institution, municipality, township, county, state agency or federal agency. **History:** L. 1978, ch. 352, § 1; July 1.

65-3022. Same; determining and monitoring of power generation facilities environmental impact; programs for; fees; rules and regulations. In order to defray costs in determining and monitoring the environmental impact of power generation facilities with respect to air quality and, in the case of nuclear powered generation facilities, the overall radiological impact thereof, the secretary is authorized and directed to adopt rules and regulations to provide for the establishment of fees and for the collection thereof from each such facility. Such fees shall be determined and collected annually, and such determination shall be based upon the size and type of such facilities. In establishing programs for determining and monitoring environmental

impact, the secretary shall take into consideration monitoring programs conducted by other persons and where possible avoid duplication of effort and expense. The secretary may also provide for quality review and evaluation of monitoring conducted by other persons in order to further the objectives of this act and to determine the extent and necessity of monitoring programs to be conducted by the department of health and environment. **History:** L. 1978, ch. 352, § 2; July 1.

65-3023. Same; fees; disposition of moneys; power generating facility fee fund created.

The secretary shall remit all moneys received from fees under K.S.A. [65-3022](#), and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. [75-4215](#), and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the power generating facility fee fund, which fund is hereby created. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary. **History:** L. 1978, ch. 352, § 3; L. 1983, ch. 286, § 4; L. 2001, ch. 5, § 242; July 1.

65-3024. Emissions fees. (a) The secretary may fix, charge and collect annual emissions fees in amounts necessary to pay the direct and indirect costs of administering the provisions of the Kansas air quality act. The secretary shall adopt rules and regulations fixing such fees and shall periodically increase or decrease such fees consistent with the need to cover the direct and indirect costs of administering the program. To the extent possible, annual emission fees shall be based upon actual emissions determined pursuant to rules and regulations adopted by the secretary. For purposes of determining emission fees for a facility, emissions of any single regulated pollutant in excess of 4,000 tons per year shall not be included in the calculation when determining the total emissions from the facility.

(b) There is hereby established in the state treasury the air quality fee fund. Revenue from the following sources shall be deposited in the state treasury and credited to the fund:

(1) Fees collected under subsection (a);

(2) any moneys recovered by the state under the provisions of this act, including permit and approval fees collected under K.S.A. [65-3008](#), and amendments thereto, administrative expenses, civil penalties and moneys paid under any agreement, stipulation or settlement; and

(3) interest attributable to investment of moneys in the fund.

(c) Moneys deposited in the fund shall be expended only for the purpose of administering the Kansas air quality act, including funding of a technical and environmental compliance assistance program, and for no other governmental purposes.

(d) On or before the 10th of each month, the director of accounts and reports shall transfer from the state general fund to the air quality fee fund interest earnings based on:

(1) The average daily balance of moneys in the air quality fee fund for the preceding month; and

(2) the net earnings rate of the pooled money investment portfolio for the preceding month.

(e) All expenditures from the fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary for the purposes set forth in this section. **History:** L. 1993, ch. 13, § 8; L. 1996, ch. 253, § 13; L. 2014, ch. 30, § 4; July 1.

65-3025. Unlawful acts. It shall be unlawful for any person to do any of the following:

(a) Violate any provision of an order issued under this act.

(b) Violate any provision of an approval or permit issued under this act.

(c) Violate any provision of this act or any rule and regulation promulgated under this act, unless the secretary makes a determination relating to the permittee that the specified provisions referred to in such determination are not applicable to the source and the permit includes that determination or a concise summary thereof. Compliance with the provisions of a permit shall be deemed compliance with applicable provisions of this act or any rule and regulation promulgated under this act if the permit includes the applicable requirements of such provisions. Nothing in this subsection (c) or in any permit shall alter or affect: (1) The provisions of section 303 of the federal clean air act (emergency orders), including the authority of the administrator of the United States environmental protection agency under that section; (2) the provisions of K.S.A. [65-3012](#) and amendments thereto; (3) the liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance; (4) the applicable requirements of the acid rain program consistent with section 408a of the federal clean air act; (5) the ability of the United States environmental protection agency to obtain information from a source pursuant to section 114 of the federal clean air act; or (6) the ability of the secretary to obtain information from a source pursuant to this act.

(d) Construct, modify, alter, use or operate an air contaminant emission stationary source without an approval or permit allowing such construction, modification, alteration, use or operation.

(e) At any time, refuse or hinder entry, inspection, sampling or examination or copying of records related to the purposes of this act by an agent or employee of the secretary after such agent or employee identifies and gives notice of the agent's or employee's purpose.

(f) Fail to pay any fee required by this act or rules and regulations promulgated under this act.

(g) Knowingly make any false material statement, representation or certification in any application, record, report, permit or other document filed, maintained or used for purposes of compliance with this act.

(h) Knowingly destroy, alter or conceal any record required to be maintained under rules and regulations promulgated by the secretary under this act. **History:** L. 1993, ch. 13, § 10; March 25.

65-3026. Criminal penalties. (a) Violation of any provision of subsections (a) through (f) of K.S.A. [65-3025](#), and amendments thereto, is a class A nonperson misdemeanor.

(b) Knowingly violating any provision of K.S.A. [65-3025](#) is a severity level 10, nonperson felony.

(c) In the case of a continuing violation, every day such violation continues shall be deemed a separate violation.

(d) The county or district attorney of every county shall file appropriate actions for enforcement of this section upon request of the secretary or upon the county or district attorney's own motion after consultation with the secretary. **History:** L. 1993, ch. 13, § 11; L. 1995, ch. 251, § 19; July 1.

65-3027. Small business assistance program; compliance advisory panel. (a) There is hereby created the small business stationary source technical and environmental compliance assistance program, to be administered by the secretary. The program shall include each of the following:

(1) Adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources and programs to encourage lawful cooperation among such sources and other persons to further compliance with this act.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution.

(3) A designated office within the Kansas department of health and environment, reporting directly to the secretary, to serve as ombudsman for small business stationary sources in connection with implementation of this act.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this act in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final rule and regulation or standard adopted under this act.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this act, including mechanisms for referring such sources to qualified auditors or for providing audits of the operations of such sources to determine compliance with this act.

(7) Procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance; or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirement of this act and rules and regulations promulgated hereunder.

(b) "Small business stationary source" means a stationary air contaminant emission source that:

- (1) Is owned or operated by a person that employs 100 or fewer individuals;
- (2) is a small business concern as defined in the federal small business act;
- (3) is not a major stationary source;
- (4) does not emit 50 tons or more per year of any regulated air contaminant; and
- (5) emits less than 75 tons per year of all regulated air contaminants.

(c) Upon petition by a source, the secretary, after notice and opportunity for public comment, may include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subsection (b)(3), (4) or (5) but which does not emit more than 100 tons per year of all regulated air contaminants.

(d) The secretary may exclude from the small business stationary source definition any category or subcategory of sources that the administrator of the United States environmental protection agency determines to have sufficient technical and financial capabilities to meet the requirements of the federal clean air act without the application of this program, as provided by section 507(c)(3)(A) of the 1990 amendments to the federal clean air act.

(e) The secretary, in consultation with the administrator of the United States environmental protection agency and the administrator of the United States small business administration and after providing notice and the opportunity for public hearing, may exclude from the small business

stationary source definition any category or subcategory of sources that the secretary determines to have sufficient technical and financial capabilities to meet the requirements of the act without the application of this section.

(f) There is hereby created a compliance advisory panel composed of seven individuals. The compliance advisory panel shall:

(1) Render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered and degree and severity of enforcement;

(2) make periodic reports to the administrator of the United States environmental protection agency concerning compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of the federal paperwork reduction act, the regulatory flexibility act and the equal access to justice act;

(3) review information for small business stationary sources to assure such information is understandable by the layperson; and

(4) have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(g) The compliance advisory panel shall consist of:

(1) Two members who are not owners, or representatives of owners, of small business stationary sources, appointed by the governor to represent the general public;

(2) two members who are owners, or who represent owners, of small business stationary sources, one appointed by the speaker and one appointed by the minority leader of the Kansas house of representatives;

(3) two members who are owners, or who represent owners, of small business stationary sources, one appointed by the president and one appointed by the minority leader of the Kansas senate; and

(4) one member appointed by the secretary to represent the department of health and environment.

(h) Members of the compliance advisory panel serving on the effective date of this act by appointment by the governor, the speaker of the house of representatives or the president of the senate shall serve for terms ending June 30, 1998; members serving on the effective date of this act by appointment by the minority leader of the house of representatives, the minority leader of the senate or the secretary of health and environment shall serve for terms ending June 30, 1997. Upon expiration of such terms, the term of each member appointed to a vacancy created by expiration of a term shall be two years commencing on July 1 immediately following expiration of the term of the member's predecessor. Any vacancy occurring on the panel shall be filled for the unexpired term by appointment by the original appointing authority.

(i) A chairperson shall be elected annually by the members of the compliance advisory panel. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(j) The secretary may reduce any fee required by this act for any classification of small business sources to take into account the financial resources of such classification. **History:** L. 1993, ch. 13, § 15; L. 1997, ch. 18, § 1; Apr. 3.

65-3028. Rules and regulations continued in effect. All rules and regulations promulgated pursuant to K.S.A. 65-3001 *et seq.*, and amendments thereto, in existence on the effective date of this act shall continue to be effective until revised, amended, repealed or nullified pursuant to law. **History:** L. 1993, ch. 13, § 16; March 25.

65-3029. Duties of secretary; approval of prevention of significant deterioration permit. (a) The secretary shall timely approve a prevention of significant deterioration permit (PSD) to sunflower electric power corporation to be issued consistent with the settlement agreement executed May 4, 2009, by sunflower electric power corporation and the governor of the state of Kansas to resolve all claims or causes of action, or both, pending before various courts and administrative agencies consistent with article V of the settlement agreement.

(b) This section shall be part of and supplemental to the Kansas air quality act. **History:** L. 2009, ch. 141, § 42; May 28

65-3030. Severability clause. The provisions of this act [*] are declared to be severable and if any provision, word, phrase or clause of the act or the application thereof to any person shall be held invalid, such invalidity shall not affect the validity of the remaining portions of this act. **History:** L. 2009, ch. 141, § 43; May 28. * See comparative table of sections in Constitutions volume at L. 2009, ch. 141.

65-3031. Electric generating units; carbon dioxide emissions standards; submission of state plan by secretary to environmental protection agency; review by study committee and attorney general. (a) In accordance with the requirements of the environmental protection agency's rulemaking pursuant to docket EPA-HQ-OAR-2013-0602, the secretary may develop and submit to the environmental protection agency a state plan for compliance with the regulation of carbon dioxide from any affected or existing electric generating units pursuant to 42 U.S.C. § 7411. The secretary of health and environment may establish separate standards of performance for carbon dioxide emissions based upon: (1) The best system of emission reduction that has been adequately demonstrated while considering the cost of achieving such reduction;

(2) reductions in emissions of carbon dioxide that can reasonably be achieved through measures taken at each electric generating unit; and

(3) efficiency improvements to any affected electric generating unit and other measures that can be undertaken at each electric generating unit to reduce carbon dioxide emissions without any requirements for fuel switching, co-firing with other fuels or limiting the utilization of the unit.

(b) In establishing any standard of performance for any existing electric generating unit pursuant to this section, the secretary may consider alternative standards and metrics or may provide alternative compliance schedules than those provided by federal rules or regulations by evaluating: (1) Unreasonable costs of achieving an emission limitation due to plant age, location or the design of an electric generating unit;

(2) any unusual physical or compliance schedule difficulties or impossibility of implementing emission reduction measures;

(3) the cost of applying the performance standard to an electric generating unit;

(4) the remaining useful life of an electric generating unit;

(5) any economic or electric transmission and distribution impacts resulting from closing the electric generating unit if compliance with the performance standard is not possible; and

(6) the potential for a standard of performance relating to unit efficiency, including any requirements for a new source review or the application of a best available control technology emission limitation for any criteria pollutant as a condition of receiving a permit or authorization for the project.

(c) The secretary may implement such standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading or other alternative implementation measures that the secretary determines to be in the interest of Kansas. The secretary may enter into voluntary agreements with utilities that operate fossil-fuel based electric generating units within Kansas to implement such carbon dioxide emission standards. Such agreements may aggregate the carbon dioxide emissions levels from electric resources in this state, including coal, petroleum, natural gas or renewable energy resources as defined in K.S.A. 2015 Supp. [66-1257](#), and amendments thereto, that are owned, operated or utilized by power purchase agreements by utilities for purposes of determining compliance with such carbon dioxide emission standards.

(d) The secretary and the state corporation commission shall enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under the Kansas air quality act.

(e) (1) The secretary shall submit to the clean power plan implementation study committee:

(A) A plan to investigate, review and develop a state plan no later than the first week of November 2015;

(B) information on any final rule adopted by the environmental protection agency under docket EPA-HQ-OAR-2013-0602 no later than February 1, 2016; and

(C) any information requested by the chairperson.

(2) The state corporation commission shall submit information to the clean power plan implementation study committee concerning:

(A) Each utility's re-dispatch options along with the cost of each option;

(B) the lowest possible cost re-dispatch options on a state-wide basis; and

(C) the impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

(f) The secretary shall present any proposed state plan proposed for submission to the environmental protection agency to the clean power plan implementation study committee for review and input pursuant to K.S.A. 2015 Supp. [66-1285](#), and amendments thereto, at least 30 days prior to submission of such a plan to the environmental protection agency or any other federal agency. If a proposed plan is disapproved by the clean power plan implementation study committee, the secretary shall resubmit a revised plan to the study committee. The secretary may submit any proposed plan to the environmental protection agency that has been submitted to the study committee and that has not been disapproved by the committee within 30 days of the committee receiving such proposed plan.

(g) Notwithstanding review by the clean power plan implementation study committee of the submission of a state plan to the environmental protection agency, further action by the secretary to implement or enforce the final approved state plan is dependent upon the final adoption of the federal emission guidelines. If the federal emission guidelines are not adopted or are adopted and subsequently suspended, vacated, in whole or in part, or held to not be in accordance with the law, the secretary shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.

(h) Notwithstanding any other provision of law, prior to submitting any state plan to the environmental protection agency, the secretary shall: (1) Submit such state plan as proposed rules

and regulations pursuant to K.S.A. [77-415](#) et seq., and amendments thereto. Such submission shall be expedited by any agency reviewing such proposed rules and regulations pursuant to K.S.A. [77-415](#) et seq., and amendments thereto;

(2) request a review of the proposed state plan by the office of the attorney general. The attorney general review may certify to the secretary that the plan will not hinder, undermine or in any way harm the position of the state of Kansas in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602. The attorney general shall also review the proposed state plan concerning any impacts on the protections guaranteed by the constitutions of the United States or the state of Kansas; and

(3) not submit a state plan if the attorney general review indicates that the proposed plan would adversely impact the state's legal position in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602 or if the attorney general review indicates that the proposed state plan adversely impacts protections guaranteed by the constitutions of the United States or the state of Kansas.

(i) The secretary shall be responsible for submitting a state plan to the environmental protection agency in a timely manner. Notwithstanding any other provision of this act, the secretary shall prepare and submit any request for an extension of time to file a state plan, if necessary, an interim state plan or a final state plan to the environmental protection agency. Any interim or final state plan shall be submitted by the secretary no less than four calendar days prior to the federal submission deadline, or extended submission deadline, established by the environmental protection agency. Any final state plan submitted to the environmental protection agency may only be submitted if the secretary has previously submitted such plan for review by the clean power plan implementation study committee pursuant to this act.

(j) This section shall be part of and supplemental to the Kansas air quality act. **History:** L. 2014, ch. 64, § 1; L. 2015, ch. 74, § 1; June 4. (Amended by [Senate Bill 318; Sec. 3](#))

Please note that this copy of the Kansas Air Quality Statutes may contain typographical errors. The text contained herein is from the Revisor of Statutes of the State of Kansas:

<http://www.ksrevisor.org/ksa.html>

revisor of statutes to the president of the senate and the speaker of the house of representatives pursuant to subsection (e) during 2012 and which have been reviewed during the 2013 legislative session and continued in existence by the legislature as provided in subsection (g) are hereby continued in existence: 12-5811, 40-222, 40-223j, 40-5007a, 40-5009a, 40-5012a, 65-1685, 65-1695, 65-2838a, 66-1251, 66-1805, 72-60c01, 75-712 and 75-5366.

Sec. 3. K.S.A. 2015 Supp. 65-3031 is hereby amended to read as follows: 65-3031. (a) In accordance with the requirements of the environmental protection agency's rulemaking pursuant to docket EPA-HQ-OAR-2013-0602, the secretary may develop and submit to the environmental protection agency a state plan for compliance with the regulation of carbon dioxide from any affected or existing electric generating units pursuant to 42 U.S.C. § 7411. The secretary of health and environment may establish separate standards of performance for carbon dioxide emissions based upon: (1) The best system of emission reduction that has been adequately demonstrated while considering the cost of achieving such reduction;

(2) reductions in emissions of carbon dioxide that can reasonably be achieved through measures taken at each electric generating unit; and

(3) efficiency improvements to any affected electric generating unit and other measures that can be undertaken at each electric generating unit to reduce carbon dioxide emissions without any requirements for fuel switching, co-firing with other fuels or limiting the utilization of the unit.

(b) In establishing any standard of performance for any existing electric generating unit pursuant to this section, the secretary may consider alternative standards and metrics or may provide alternative compliance schedules than those provided by federal rules or regulations by evaluating: (1) Unreasonable costs of achieving an emission limitation due to plant age, location or the design of an electric generating unit;

(2) any unusual physical or compliance schedule difficulties or impossibility of implementing emission reduction measures;

(3) the cost of applying the performance standard to an electric generating unit;

(4) the remaining useful life of an electric generating unit;

(5) any economic or electric transmission and distribution impacts resulting from closing the electric generating unit if compliance with the performance standard is not possible; and

(6) the potential for a standard of performance relating to unit efficiency, including any requirements for a new source review or the application of a best available control technology emission limitation for any criteria pollutant as a condition of receiving a permit or authorization for the project.

(c) The secretary may implement such standards through flexible regulatory mechanisms, including the averaging of emissions, emissions trading or other alternative implementation measures that the secretary determines to be in the interest of Kansas. The secretary may enter into voluntary agreements with utilities that operate fossil-fuel based electric generating units within Kansas to implement such carbon dioxide emission standards. Such agreements may aggregate the carbon dioxide emissions levels from electric resources in this state, including coal, petroleum, natural gas or renewable energy resources as defined in K.S.A. 2015 Supp. 66-1257, and amendments thereto, that are owned, operated or utilized by power purchase agreements by utilities for purposes of determining compliance with such carbon dioxide emission standards.

(d) The secretary and the state corporation commission shall enter into a memorandum of understanding concerning implementation of the requirements and responsibilities under the Kansas air quality act.

(e) (1) The secretary shall submit to the clean power plan implementation study committee:

(A) A plan to investigate, review and develop a state plan no later than the first week of November 2015;

(B) information on any final rule adopted by the environmental protection agency under docket EPA-HQ-OAR-2013-0602 no later than February 1, 2016; and

(C) any information requested by the chairperson.

(2) The state corporation commission shall submit information to the clean power plan implementation study committee concerning:

(A) Each utility's re-dispatch options along with the cost of each option;

(B) the lowest possible cost re-dispatch options on a state-wide basis; and

(C) the impact of each re-dispatch option on the reliability of Kansas' integrated electric systems.

(f) The secretary shall present any proposed state plan proposed for submission to the environmental protection agency to the clean power plan implementation study committee for review and input pursuant to K.S.A. 2015 Supp. 66-1285, and amendments thereto, at least 30 days prior to submission of such a plan to the environmental protection agency or any other federal agency. If a proposed plan is disapproved by the clean power plan implementation study committee, the secretary shall resubmit a revised plan to the study committee. The secretary may submit any proposed plan to the environmental protection agency that has been submitted to the study committee and that has not been disapproved by the committee within 30 days of the committee receiving such proposed plan.

(g) Notwithstanding review by the clean power plan implementation study committee of the submission of a state plan to the environmental

protection agency, further action by the secretary to implement or enforce the final approved state plan is dependent upon the final adoption of the federal emission guidelines. If the federal emission guidelines are not adopted or are adopted and subsequently suspended, vacated, in whole or in part, or held to not be in accordance with the law, the secretary shall suspend or terminate, as appropriate, further action to implement or enforce the state plan.

(h) Notwithstanding any other provision of law, prior to submitting any state plan to the environmental protection agency, the secretary shall: (1) Submit such state plan as proposed rules and regulations pursuant to K.S.A. 77-415 et seq., and amendments thereto. Such submission shall be expedited by any agency reviewing such proposed rules and regulations pursuant to K.S.A. 77-415 et seq., and amendments thereto;

(2) request a review of the proposed state plan by the office of the attorney general. The attorney general review may certify to the secretary that the plan will not hinder, undermine or in any way harm the position of the state of Kansas in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602. The attorney general shall also review the proposed state plan concerning any impacts on the protections guaranteed by the constitutions of the United States or the state of Kansas; and

(3) not submit a state plan if the attorney general review indicates that the proposed plan would adversely impact the state's legal position in any current or pending litigation relating to the environmental protection agency docket EPA-HQ-OAR-2013-0602 or if the attorney general review indicates that the proposed state plan adversely impacts protections guaranteed by the constitutions of the United States or the state of Kansas.

(i) The secretary shall be responsible for submitting a state plan to the environmental protection agency in a timely manner. Notwithstanding any other provision of this act, the secretary shall prepare and submit any request for an extension of time to file a state plan, if necessary, an interim state plan or a final state plan to the environmental protection agency. Any interim or final state plan shall be submitted by the secretary no less than four calendar days prior to the federal submission deadline, or extended submission deadline, established by the environmental protection agency. Any final state plan submitted to the environmental protection agency may only be submitted if the secretary has previously submitted such plan for review by the clean power plan implementation study committee pursuant to this act.

(j) *Due to the February 9, 2016, stay issued by the United States supreme court, all state agency activities, studies and investigations in furtherance of the preparation of an initial submittal or the evaluation of any options for the submission of a final state plan pursuant to the environmental protection agency docket EPA-HQ-OAR-2013-0602, codified*

as 40 C.F.R. part 60, shall be suspended until the stay is lifted. Nothing in this subsection shall be construed so as to restrict the ability of a state agency from communicating with, or providing information to, other state agencies in furtherance of any of the agency's statutory obligations.

~~(j)~~(k) This section shall be part of and supplemental to the Kansas air quality act.

Sec. 4. K.S.A. 2015 Supp. 45-229, 65-3031, 74-99d01, 74-99d02, 74-99d03, 74-99d04, 74-99d05, 74-99d06, 74-99d07, 74-99d08, 74-99d10, 74-99d11, 74-99d12, 74-99d13 and 74-99d14 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.

Approved May 6, 2016.

Published in the *Kansas Register* May 19, 2016.

CHAPTER 49

HOUSE BILL No. 2563

AN ACT concerning vehicles; relating to travel trailers; amending K.S.A. 8-199 and K.S.A. 2015 Supp. 8-197 and 8-198 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2015 Supp. 8-197 is hereby amended to read as follows: 8-197. (a) The provisions of K.S.A. 8-197 to 8-199, inclusive, and amendments thereto, shall be a part of and supplemental to the provisions of article 1 of chapter 8 of the Kansas Statutes Annotated, *and amendments thereto*, and as used in such sections, the words and phrases defined by K.S.A. 8-126, and amendments thereto, shall have the meanings respectively ascribed to them therein.

(b) As used in K.S.A. 8-197 through 8-199, and amendments thereto:

(1) (A) "Nonhighway vehicle" means:

(i) Any motor vehicle which cannot be registered because it is not manufactured for the purpose of using the same on the highways of this state and is not provided with the equipment required by state statute for vehicles of such type which are used on the highways of this state;

(ii) any motor vehicle, other than a salvage vehicle, for which the owner has not provided motor vehicle liability insurance coverage or an approved self insurance plan under K.S.A. 40-3104, and amendments thereto, and has not applied for or obtained registration of such motor vehicle in accordance with article 1 of chapter 8 of the Kansas Statutes Annotated, *and amendments thereto*;

(iii) any all-terrain vehicle;

(iv) any work-site utility vehicle;

SECTION D:

PLAN REVISION

28-19-11. ~~Exceptions~~ Enforcement discretion due to ~~breakdowns~~ startup, shutdown, malfunctions, or scheduled maintenance. (a) ~~Abnormal operating conditions resulting~~ An emission source having emissions that are in excess of the applicable emission limitation and standard and result from ~~malfunction breakdown~~ startup, shutdown, malfunctions, and or ~~necessary repairs to~~ scheduled maintenance of control or processing equipment and appurtenances ~~which cause emissions in excess of the limitations specified in the emission control regulations shall not be deemed violations provided that~~ may be exempt from enforcement action at the secretary's discretion if both of the following conditions are met:

(1) The person responsible for the operation of the emission source notifies the department of the occurrence and nature of ~~such malfunctions, breakdown, or repairs~~ the excess emissions resulting from startup, shutdown, malfunctions, or scheduled maintenance, in writing, within ~~ten (10) days of noted occurrence~~ discovery of the excess emissions.

(2) ~~The number of occurrences of such breakdowns is not deemed excessive by the department and appropriate~~ Reasonable action is taken regarding the occurrence specified in paragraph (a)(1) to initiate and complete any necessary repairs and place the equipment back in operation as quickly as possible.

(b) Emissions that are in excess of the applicable emission source emission limitation and standard and result from startup, shutdown, or malfunctions shall be evaluated by the secretary for potential enforcement action based on the frequency and severity of the excess emissions.

(c) Emissions that are in excess of ~~the limitations specified in these emission control regulations resulting~~ the applicable emission source emission limitation and standard and result from scheduled maintenance of control or processing equipment and appurtenances ~~will~~ shall be

ATTORNEY GENERAL

JUL 29 2016

APPROVED BY *sf*

APPROVED

JUL 29 2016

DEPT. OF ADMINISTRATION

permitted only on the basis of evaluated by the secretary for potential enforcement action based
on the following:

- (1) The severity of the excess emissions;
- (2) any prior approval for scheduled maintenance by the department secretary; and
- (3) upon demonstration that such the scheduled maintenance cannot be accomplished by
maximum reasonable effort, including off-shift labor where required, during periods of shutdown
of any related control or processing equipment.

~~(c) Excessive contaminant emission from fuel burning equipment used for indirect heating purposes resulting from fuel or load changes, start up, soot blowing, cleaning of fires, and rapping of precipitators will not be deemed violations provided that they do not exceed a period or periods aggregating more than five (5) minutes during any consecutive one (1) hour period. Provided, however, That where the operator of such equipment can demonstrate to the satisfaction of the department that any such specific operational procedures will require that the allowable time period for excessive emissions be extended beyond five (5) minutes during any one hour, the department may authorize, upon request of the operator, an adjusted time schedule for permitting such excessive emissions. Such authorization shall require that visible emissions not exceed an opacity of 60 percent; and shall specify an appropriate time and daily frequency schedule for such excessive emissions~~

(d) Any exemption granted under this regulation may be rescinded if the secretary obtains additional information and deems enforcement action necessary based upon this information.

(e) Lack of enforcement for excess emissions under this regulation shall not preclude the

ATTORNEY GENERAL

JUL 29 2016

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taking of enforcement action by USEPA or through private citizen lawsuits. (Authorized by
K.S.A. ~~1974~~ 2015 Supp. 65-3005; implementing K.S.A. 65-3006, and K.S.A. 65-3010; effective
Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975;
amended P- _____.)

ATTORNEY GENERAL

JUL 29 2016

APPROVED BY *87*

APPROVED

JUL 29 2016

DEPT. OF ADMINISTRATION

SECTION E:
PROCEDURAL REQUIREMENT
DOCUMENTS

STATE OF KANSAS

BEFORE THE KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

**In the Matter of the Proposed Adoption of Permanent Kansas Administrative Regulations:
K.A.R. 28-19-11, 28-19-300 and 28-19-304 (amended)**

REPORT OF THE HEARING OFFICER

This matter comes before Julie Coleman, hearing officer appointed by the Secretary of the Kansas Department of Health and Environment (KDHE) to receive the comments of the public regarding the adoption of proposed permanent administrative regulations.

INTRODUCTION

Pursuant to K.S.A. 2016 Supp. 77-421, notice of the public comment period and public hearing was published in the *Kansas Register* on August 11, 2016. A copy of the public notice is included in this report as Attachment 1. The public hearing was conducted at 10:01 a.m. on Thursday, October 13, 2016, in the Azure Conference Room, Curtis State Office Building, Topeka. These regulations are promulgated under the authority of K.S.A. 2016 Supp. 65-3005.

The purposes of these regulations are to: (1) amend KAR 28-19-11 to comply with the USEPA State Implementation Plan call and avoid a Federal Implementation Plan; (2) to amend KAR 28-19-300 to implement the revised National Ambient Air Quality Standard for Fine Particulate Matter, and; (3) to amend KAR 28-19-304 to update the Kansas Minor New Source Review preconstruction permitting program fee structure.

A list of those persons present at the public hearing, as recorded on the registration sign-in sheets, is included in this report as Attachment 2.

SUMMARY OF THE RECORD **Public Comment Received**

During the public comment period preceding the hearing, which began with publication of the notice of hearing in the *Kansas Register*, KDHE received no comment letters and no electronic mail comments from the general public and regulated community. Raney Gilliland, Director, Kansas Legislative Research Department, submitted a comment letter dated September 19, 2016 on behalf of the Joint Committee on Administrative Rules and Regulations. A copy of the letter is included in this report as Attachment 3.

The hearing officer opened the public hearing with introductory remarks and called upon Douglas Watson, Chief, Air Monitoring and Planning Section, Bureau of Air, to briefly review and the proposed regulations. Mr. Watson's review is included in this report as Attachment 4.

Following this review of the regulations, the hearing officer invited public comment. No comment was presented or received from any person from the general public or regulated community during the hearing.

After the hearing, no public comment was received during the remainder of the comment period, which concluded at 5:00 p.m. on the day of the hearing.

POST-HEARING ACTIVITIES

Following the close of the public comment period, all comment received was fully considered and, where appropriate, additional changes in the proposed regulations or regulatory impact statements were made. The agency determined that no post-hearing changes in the regulations or regulatory impact statements were needed to address comment received during the public comment period. However, the regulations were submitted for post-hearing review to update the statutory citations in the regulation histories.

The agency's response to the public comments, including any additional changes proposed in response to the comments, is detailed in the agency's responsiveness summary that lists all comment that KDHE received during the public comment period. The responsiveness summary is included in this report as Attachment 5.

RECOMMENDATIONS

On the basis of the administrative record developed in this matter, the hearing officer finds and concludes that KDHE has met the public participation requirements for adopting the proposed amended air quality control regulations.

FINDINGS OF FACT

1. K.S.A. 2016 Supp. 65-3005 authorizes the Secretary of the Kansas Department of Health and Environment to adopt and amend administrative regulations pursuant to the Kansas Air Quality Act.
2. Pursuant to this authority, the Secretary promulgated the air quality control regulations at issue, made a statement of the environmental benefit and economic impact for each proposed regulation and published notice of the public comment period and hearing in the *Kansas Register* on August 11, 2016.
3. The public comment period that was established for receiving comments on the adoption of the proposed regulations was concluded on October 13, 2016, and the public hearing was held on October 13, 2016.

4. Comments related to the adoption of the proposed regulations were received and all comments have been fully considered. Changes in the proposed regulations and regulatory impact statements were not needed to address these comments, as explained in the agency's responsiveness summary

CONCLUSIONS

The hearing officer concludes that the Secretary of the Kansas Department of Health and Environment has the authority to promulgate the proposed air quality control regulations under K.S.A. 2016 Supp. 65-3005 and has met the requirements established under K.S.A. 2016 Supp. 77-415 *et seq.* for adopting regulations and filing regulations with the Kansas Secretary of State.

Dated this 31st day of October, 2016.


Julie Coleman
Hearing Officer

or unless the grounds for such objection arose after such period. Contact Ward Burns, U.S. EPA, Region 7, Air Permitting and Compliance Branch, 11201 Renner Blvd., Lenexa, KS 66219, 913-551-7960, to determine when the 45-day EPA review period ends and the 60-day petition period commences.

Susan Mosier, M.D.
Secretary of Health
and Environment

Doc. No. 044728

State of Kansas

Department of Health and Environment

Request for Comments

The Kansas Department of Health and Environment (KDHE) is soliciting comments regarding a proposed air quality operating permit. Johns Manville has applied for a Class I operating permit renewal in accordance with the provisions of K.A.R. 28-19-510 et al. The purpose of a Class I permit is to identify the sources and types of regulated air pollutants emitted from the facility; the emission limitations, standards and requirements applicable to each source; and the monitoring, record keeping and reporting requirements applicable to each source as of the effective date of permit issuance.

Johns Manville, 717 17th St., Denver, CO 80202, owns and operates a wool fiberglass insulation manufacturing facility located at 1465 17th Ave., McPherson, KS 67460.

A copy of the proposed permit, permit application, all supporting documentation, and all information relied upon during the permit application review process are available for public review during normal business hours, 8 a.m. to 5 p.m., at the KDHE, Bureau of Air (BOA), 1000 S.W. Jackson, Suite 310, Topeka, and at the North Central District Office (NCDO), 2501 Market Place, Suite D, Salina. To obtain or review the proposed permit and supporting documentation contact Lynelle Ladd, 785-296-1719, at the KDHE central office or Joshua Webb, 785-827-9639, at the NCDO. The standard departmental cost will be assessed for any copies requested.

Written comments or questions regarding the proposed permit may be directed to Lynelle Ladd, KDHE, BOA, 1000 S.W. Jackson, Suite 310, Topeka, KS 66612-1366. In order to be considered in formulating a final permit decision, written comments must be received no later than noon Monday, September 12, 2016.

A person may request a public hearing be held on the proposed permit. The request for a public hearing shall be in writing and set forth the basis for the request. The written request must be submitted to Lynelle Ladd, KDHE, BOA, no later than noon Monday, September 12, 2016 in order for the secretary of Health and Environment to consider the request.

The U.S. Environmental Protection Agency has a 45-day review period, which will start concurrently with the public comment period, within which to object to the proposed permit. If the EPA has not objected in writing to the issuance of the permit within the 45-day review period, any person may petition the administrator of the EPA to review the permit. The 60-day public petition pe-

riod will directly follow the EPA's 45-day review period. Interested parties may contact KDHE to determine if the EPA's 45-day review period has been waived.

Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in this notice, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. Contact Ward Burns, U.S. EPA, Region 7, Air Permitting and Compliance Branch, 11201 Renner Blvd., Lenexa, KS 66219, 913-551-7960, to determine when the 45-day EPA review period ends and the 60-day petition period commences.

Susan Mosier, M.D.
Secretary of Health
and Environment

Doc. No. 044729

State of Kansas

Department of Health and Environment

Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing at 10 a.m. Thursday, October 13, 2016, in the Azure Conference Room, fourth floor, Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed amended air quality regulations K.A.R. 28-19-11, 28-19-300 and 28-19-304. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

A summary of the proposed regulations and the estimated economic impact follows.

Summary of Regulations:

K.A.R. 28-19-11. KDHE proposes to amend K.A.R. 28-19-11 to comply with the USEPA SIP call and avoid a Federal Implementation Plan if the state does not comply. Amendments remove the authority of KDHE to declare excess emissions from a startup, shutdown, malfunction or scheduled maintenance event "not a violation" of applicable emission limitations and standards.

K.A.R. 28-19-300. KDHE proposes to amend K.A.R. 28-19-300 to implement the revised National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM_{2.5}) and to clarify and refine applicability criteria for sources subject to the Kansas Minor New Source Review (NSR) permitting program.

K.A.R. 28-19-304. KDHE proposes to amend K.A.R. 28-19-304 to update the NSR preconstruction permitting program fee structure from an estimated capital cost mechanism to one based on complexity of source and permit type. Current preconstruction permitting fees were established January 23, 1995, and have not been amended or evaluated since inception.

(continued)

Economic Impact:

The proposed amendments impose no additional costs to the implementing agency, other governmental agencies, units, or the general public.

Costs to the regulated community and consumers: Sources required to obtain a minor NSR construction approval or permit will incur a cost ranging from \$750 for an approval or \$1,000 to \$4,000 for a permit depending on the source category. If the source is required to obtain a Prevention of Significant Deterioration or Nonattainment NSR permit they will incur a cost ranging from \$3,000 to \$18,000 depending on the complexity of the project and the requirement for refined modeling.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments prior to 5 p.m. on the day of the hearing to Douglas Watson, Chief, Air Monitoring and Planning Section, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612-1366, by email to dwatson@kdheks.gov, or by fax to 785-296-7455. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding regulatory impact statements may be obtained from the KDHE Bureau of Air at <http://www.kdheks.gov/bar/planning/pnplanning.html> or by contacting Douglas Watson at dwatson@kdheks.gov, 785-296-0910 or fax 785-296-7455. Copies may also be viewed at the following locations:

- Department of Air Quality, Unified Government of Wyandotte County-Kansas City, Kansas Health Department, 619 Ann Ave., Kansas City, Kansas
- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe
- Curtis State Office Building, 1000 S.W. Jackson St., Suite 310, Topeka
- KDHE Northeast District Office, 800 W. 24th St., Lawrence
- KDHE Northwest District Office, 2301 E. 13th St., Hays
- KDHE North Central District Office, 2501 Market Place, Suite D, Salina
- KDHE South Central District Office, 130 S. Market, Suite 6050, Wichita
- KDHE Southeast District Office, 1500 W. 7th St., Chanute
- KDHE Southwest District Office, 302 W. McArtor Road, Dodge City
- Wichita-Sedgwick County Department of Community Health, 1900 E. 9th St., Wichita

Questions pertaining to the proposed regulation should be directed to Douglas Watson at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the regulatory impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Douglas Watson.

Susan Mosier, M.D.
Secretary of Health
and Environment

Doc. No. 044736

State of Kansas**Board of Indigents' Defense Services****Notice on Hearing on Proposed
Administrative Regulations**

A public hearing will be conducted on Tuesday, October 11, 2016, at 9 a.m. in the meeting room of the Board of Indigents' Defense Services (BIDS), Suite 500, 700 S.W. Jackson, Topeka, Kansas. The hearing is scheduled to last for 30 minutes. The hearing is to consider the adoption of proposed regulations by the Board of Indigents' Defense Services on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the proposed regulations noted below. All interested parties may submit written comments prior to the hearing to BIDS, Suite 500, 700 S.W. Jackson, Topeka, KS 66603 or by email to Pscalia@sbids.org. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to an appropriate timeframe.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made *at least one week* in advance of the hearing by contacting Beth Child at 785-296-8416. The Jayhawk Hotel building is accessible for disabled persons and accessible parking is located in front of the building. A summary of the proposed regulations and their Economic Impact follow.

Copies of the full proposed regulations and the Economic Impact Statement for the proposed regulations can be obtained at BIDS, Suite 500, 700 S.W. Jackson, Topeka, KS 66603.

K.A.R. 105-5-2, K.A.R. 105-5-3, K.A.R. 105-5-6, K.A.R. 105-5-7 and K.A.R. 105-5-8 establish the hourly rate to be paid to the private attorneys who accept court appointments to defend indigent persons in the absence of a public defender. The rate to be paid to assigned counsel is increased from \$65 per hour to \$70 per hour and each of the "caps" for the severity level of the charge is similarly increased from the "cap" at \$65 per hour to the "cap" at \$70 per hour. These amendments reflect action taken by the Board under its statutory authority to adjust

SIGN-IN SHEET FOR WRITTEN COMMENT OR ATTENDANCE

AIR QUALITY CONTROL REGULATIONS PUBLIC HEARING

October 13, 2016

KAR 28-19-11, 28-19-300, and 28-19-304

NAME (Please print)	ORGANIZATION/BUSINESS	WRITTEN COMMENTS	
		YES (received)	NO
INGRID SETZLER	KC BPU		X
Douglas Watson	KDHE		X
Jessica Keck	Westar		X
Julie Coleman	KDHE		X
Javier Ahumada	KDHE		X
William Stone	KDHE		X
Josephine Boac	KDHE		X

SIGN-IN SHEET FOR WRITTEN COMMENT OR ATTENDANCE

AIR QUALITY CONTROL REGULATIONS PUBLIC HEARING

October 13, 2016

KAR 28-19-11, 28-19-300, and 28-19-304

NAME (Please print)	ORGANIZATION/BUSINESS	WRITTEN COMMENTS	
		YES (received)	NO
Susana Pjesky	KDHE		X
Vivien Smith	KDHE		X
Mitch DeFret	Hein Gormann Consulting		X
Jason Heidman	KDHE		X
Connie Ellis	Connie Ellis KAHF		X
Susan Vogel	KDHE Legal		X

Attachment 3 -- Public Comment

STATE OF KANSAS

RANEY L. GILLILAND

Director

MELISSA S. CALDERWOOD

Assistant Director for Research

J. G. SCOTT

Assistant Director for Fiscal Affairs

AMY DECKARD

Assistant Director for Information Management



STAFF

LEGISLATIVE COORDINATING COUNCIL

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KANSAS LEGISLATIVE RESEARCH DEPARTMENT

Room 68-West — State Capitol Building — 300 SW Tenth Avenue — Topeka, Kansas 66612-1504

PHONE (785) 296-3181 ♦ FAX (785) 296-3824 ♦ TTY (785) 296-3677

INTERNET: <http://www.kslegislature.org/kldr> E-MAIL: kslegres@kldr.ks.gov

RECEIVED

SEP 20 2016

Office of the Secretary

September 19, 2016

Dr. Susan Mosier, Secretary
Kansas Department of Health and Environment
1000 SW Jackson
Topeka, KS 66612

Dear Secretary Mosier:

At its meeting on September 6, 2016, the Joint Committee on Administrative Rules and Regulations reviewed for public comment rules and regulations concerning KAR 28-19-11, enforcement discretion due to startup, shutdown, malfunctions, or scheduled maintenance; KAR 28-19-300, construction permits and approvals, applicability; KAR 28-19-304, construction permits and approvals, fees. After discussion, the Committee had the following comment.

Economic Impact Statement. The Committee recognizes the agency included economic impact information in sections titled "Background of Proposed Amendments" in this set of rules and regulations. However, the Committee requests the agency to update its Economic Impact Statement on this set of rules and regulations with the economic impact information included in the "Background of Proposed Amendment" with actual dollar amounts.

Prior to filing with the Secretary of State, review the history sections of the rules and regulations to update them to the most recent statutory citations, making certain the citations for authorizing and implementing statutes are correct and complete. Please indicate your agency's website address in the filing notice where proposed regulations can be located. In addition, if your agency accepts written comments by e-mail include this information in the public notice. Further, e-mail requests for public accommodation should be included as a part of the notice. Finally, verify that the adoption by reference of any materials included in the regulations is properly completed as prescribed in the Policy and Procedure Manual for the Adoption of Kansas Administrative Regulations.

Please make this letter a part of the public record on these regulations. The Committee will review the regulations the agency ultimately adopts, and reserves any expression of legislative concern to that review.

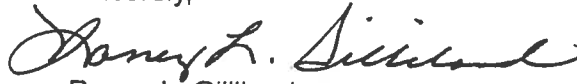
To assist in that final review:

Please inform the Joint Committee and me, in writing, at the time the rules and regulations are adopted and filed with the Secretary of State, of any and all changes that have been made following the public hearing. Please notify the Joint Committee and me, in writing, when your agency has adopted the regulations as permanent; delayed implementation of the regulations; or decided not to adopt any of the regulations.

Also, please indicate separately to the Joint Committee and me, any changes made to the proposed regulations reviewed by the Committee.

Based upon direction from the Committee, failure to respond to each and every comment contained in this letter may result in the request that a spokesperson from your agency appear before the Committee to explain the agency's failure to reply.

Sincerely,

A handwritten signature in black ink, appearing to read "Raney L. Gilliland", written in a cursive style.

Raney L. Gilliland
Director

RLG/db

Attachment 4 – KDHE Staff Review of Regulations

Public Hearing Testimony

October 13, 2016

Douglas Watson, Bureau of Air, Kansas Department of Health and Environment

Proposed Revisions to K.A.R. 28-19-11, 300 and 304

Good morning. I am Douglas Watson, Chief, Air Monitoring and Planning Section with the Bureau of Air at KDHE. The Bureau is proposing amendments to three Kansas Air Quality Regulations. The details of these proposed amendments are contained in the Regulatory Impact Statements, and I will summarize them for you this afternoon.

K.A.R. 28-19-11. The first of these amendments is Kansas Administrative Regulation (K.A.R.) 28-19-11. KDHE is proposing to amend this regulation to comply with the USEPA SIP call and avoid a Federal Implementation Plan if the state does not comply. The Clean Air Act (CAA) (section 110(k)(5)) provides a mechanism commonly called a "SIP call" for correcting state implementation plans that the USEPA Administrator finds to be substantially inadequate to meet CAA requirements. Exemptions from emission limits during periods of startup, shutdown and malfunction (SSM) exist in a number of state rules, some of which were adopted and approved into SIPs by the EPA many years ago. Recent court decisions have held that under the CAA, such exemptions are not allowed in SIPs. In issuing the SIP call action, the EPA directed the affected states to correct specific SSM provisions in their SIPs. The Clean Air Act allows a maximum of 18 months from the issuance of the final action to submit a SIP revision. The SIP submission deadline for each of the 36 states subject to the SIP call action is November 22, 2016. The proposed amendments remove the authority of KDHE to declare excess emissions from a startup, shutdown, malfunction or scheduled maintenance event "not a violation" of applicable emission limitations and standards and would avoid the implementation of a federal plan that could require more reporting of SSM events than the department's proposed amendments, therefore likely increasing costs to the department and industry. In addition, once a FIP is in place, the USEPA would assume primary enforcement responsibilities over affected Kansas sources.

Economic Impact: The proposed amendments impose no new capital costs to the implementing agency, the general public or the regulated community.

K.A.R. 28-19-300 Secondly, KDHE is proposing to amend K.A.R. 28-19-300 “*Construction permits and approvals; applicability*” specifically to implement the revised National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM_{2.5}). In addition, to clarify and refine applicability criteria for sources subject to the Kansas Minor New Source Review (NSR) permitting program, KDHE is proposing the following amendments which:

- eliminate the requirement for all Title IV Acid Rain sources to obtain construction permits that would not have otherwise been required to obtain a permit;
- clarify the preconstruction review requirements for sources emitting hazardous air pollutants, or sources subject to standards promulgated by the USEPA; and
- eliminate the requirement for sources to obtain an approval solely due to being subject to standards promulgated by the USEPA without regard to emissions for insignificant activities.

Economic Impact: The proposed amendments impose no new capital costs to the implementing agency or to the general public. The elimination of these permitting requirements will lessen both the burden and cost to Kansas businesses.

K.A.R. 28-19-304 Lastly KDHE is proposing to amend K.A.R. 28-19-304 “*Construction permits and approvals; fees*” to update the NSR preconstruction permitting program fee structure from an estimated capital cost mechanism to one based on complexity of source and permit type. K.S.A. 65-3008 authorizes the Secretary of the Kansas Department of Health and Environment (KDHE) to fix, charge and collect fees for approvals and permits, and the renewal thereof, to cover all or any part of the cost of administering the provisions of the Kansas air quality act (KAQA). As such, the Secretary is required to adopt regulations fixing such fees and to periodically increase or decrease such fees, as needed to administer the KAQA. The purpose of this proposed regulatory action is two-fold. First the Bureau of Air (BOA) is proposing to restructure and modify current fee calculation requirements to clarify potentially ambiguous language relating to the calculation of estimated capital cost.

The second is to update the fee schedule to bring in sufficient revenue to adequately administer the KAQA. Current construction permitting fees were established January 23, 1995, and have not been amended or evaluated since inception. The permitting process has become increasingly complex and labor intensive during the past twenty years due to federal

requirements and BOA is proposing to restructure these fees to cover the cost of this work. To cover part of KDHE's cost of administering the NSR preconstruction permitting program, K.S.A. 65-3008 authorizes KDHE to collect fees for approvals and permits. BOA currently collects fees for construction permits pursuant to Kansas Administrative Regulations (K.A.R.) 28-19-304 *Construction permits and approvals; fees*; which is the focus of this regulatory amendment. For SFY 2015, BOA collected construction and operating permit application fees totaling \$180,271 of these \$163,295 were from construction projects. KDHE is proposing to restructure permit and approval application fees to more accurately support current construction permitting program activities. These fees will be deposited into the AQFF and will be used solely for the purposes of administering the NSR preconstruction permitting program.

KDHE has prepared this proposal in order to maintain the current level of preconstruction permitting services. Based upon a review of current and proposed fees for similar services in other states, the proposed fee increase is still marginal in comparison, but necessary to cover the direct and indirect costs of administering the state preconstruction permitting program.

Economic Impact: The proposed amendments impose no new capital costs to the implementing agency or to the general public. Sources required to obtain a minor NSR construction approval or permit will incur a cost ranging from \$750 for an approval or \$1,000 to \$4,000 for a permit depending on the source category. If the source is required to obtain a Prevention of Significant Deterioration or Nonattainment NSR permit they will incur a cost ranging from \$3,000 to \$18,000 depending on the complexity of the project and the requirement for refined computer modeling.

The department has provided copies of the proposed regulations and Regulatory Impact Statements to the League of Kansas Municipalities, Kansas Association of Counties and the Kansas Association of School Boards. As of today, we have received only one minor comment to the proposed amended regulations. We also provided a copy of these proposed amended rules to the US EPA, and they indicated, at that time, that they have no comments on our proposal. That concludes my testimony. Thank you.

Attachment 5 -- KDHE Responsiveness Summary

ATTACHMENT TO THE REPORT OF THE HEARING OFFICER

K.A.R. 28-19-11, 28-19-300, 28-19-304

Proposed Amended Regulations

Legal Authorities

Kansas Statutes Annotated (K.S.A.) 65-3005, as amended, authorizes and directs the secretary to adopt such rules and regulations as necessary to enable the secretary to carry out the purpose and provisions of the Kansas Air Quality Act, K.S.A. 65-3001 *et seq.* and amendments thereto.

Responsiveness Summary

On October 13, 2016, a public hearing was held at 10:00 a.m. in the Azure Conference Room of the Curtis State Office Building in Topeka, Kansas. The purpose of the hearing was to consider the adoption of the following amended air quality regulations:

- K.A.R. 28-19-11 *Enforcement discretion due to start up, shut down, malfunctions, or scheduled maintenance.*
- K.A.R. 28-19-300 *Construction permits and approvals; applicability.*
- K.A.R. 28-19-304 *Construction permits and approvals; fees.*

The public comment period began with the publication of the Notice of Hearing on Proposed Administrative Regulations in the *Kansas Register* on August 11, 2016, and ended on October 13, 2016. The only comments received during this time were from Raney L. Gilliland, who submitted a letter on behalf of the Joint Committee on Administrative Rules and Regulations.

The Joint Committee on Administrative Rules and Regulations considered the proposed regulation at its meeting on September 6, 2016. KDHE received a comment letter from the Joint Committee dated September 19, 2016, which can be found in Attachment 3 to the Report of the Hearing Officer. Joint Committee comments and KDHE's responses follow.

Comment: "Economic Impact Statement. The Committee recognizes the agency included economic impact information in sections titled "Background of Proposed Amendments" in this set of rules and regulations. However, the Committee requests the agency to update its Economic Impact Statement on this set of rules and regulations with the economic impact information included in the "Background of Proposed Amendment" with actual dollar amounts."

Response: Per the September 6th meeting, KDHE understood this comment pertained only to the Regulatory Impact Statement (RIS) for the proposed K.A.R. 28-19-304. KDHE believes that although there is a summary economic impact projection stated in the "Background of Proposed Amendments" section of the RIS, KDHE also provided a complete detailed analysis in dollar amounts of projected economic impacts in the "Economic Benefit Statement" section of the RIS starting on page 3 as required. Until the amended regulations are in effect in Kansas, KDHE is

unable to provide actual dollar amounts in the RIS and as such has provided projected dollar amounts. KDHE believes we have adequately addressed our statutory requirements, but will consider this comment in future preparations of Regulatory Impact Statements.

Action: No change was made to the proposed regulations or the accompanying Regulatory Impact Statements as a result of this comment.

SECTION F:
PUBLIC NOTICE DOCUMENTS

or unless the grounds for such objection arose after such period. Contact Ward Burns, U.S. EPA, Region 7, Air Permitting and Compliance Branch, 11201 Renner Blvd., Lenexa, KS 66219, 913-551-7960, to determine when the 45-day EPA review period ends and the 60-day petition period commences.

Susan Mosier, M.D.
Secretary of Health
and Environment

Doc. No. 044728

State of Kansas

Department of Health and Environment

Request for Comments

The Kansas Department of Health and Environment (KDHE) is soliciting comments regarding a proposed air quality operating permit. Johns Manville has applied for a Class I operating permit renewal in accordance with the provisions of K.A.R. 28-19-510 et al. The purpose of a Class I permit is to identify the sources and types of regulated air pollutants emitted from the facility; the emission limitations, standards and requirements applicable to each source; and the monitoring, record keeping and reporting requirements applicable to each source as of the effective date of permit issuance.

Johns Manville, 717 17th St., Denver, CO 80202, owns and operates a wool fiberglass insulation manufacturing facility located at 1465 17th Ave., McPherson, KS 67460.

A copy of the proposed permit, permit application, all supporting documentation, and all information relied upon during the permit application review process are available for public review during normal business hours, 8 a.m. to 5 p.m., at the KDHE, Bureau of Air (BOA), 1000 S.W. Jackson, Suite 310, Topeka, and at the North Central District Office (NCDO), 2501 Market Place, Suite D, Salina. To obtain or review the proposed permit and supporting documentation contact Lynelle Ladd, 785-296-1719, at the KDHE central office or Joshua Webb, 785-827-9639, at the NCDO. The standard departmental cost will be assessed for any copies requested.

Written comments or questions regarding the proposed permit may be directed to Lynelle Ladd, KDHE, BOA, 1000 S.W. Jackson, Suite 310, Topeka, KS 66612-1366. In order to be considered in formulating a final permit decision, written comments must be received no later than noon Monday, September 12, 2016.

A person may request a public hearing be held on the proposed permit. The request for a public hearing shall be in writing and set forth the basis for the request. The written request must be submitted to Lynelle Ladd, KDHE, BOA, no later than noon Monday, September 12, 2016 in order for the secretary of Health and Environment to consider the request.

The U.S. Environmental Protection Agency has a 45-day review period, which will start concurrently with the public comment period, within which to object to the proposed permit. If the EPA has not objected in writing to the issuance of the permit within the 45-day review period, any person may petition the administrator of the EPA to review the permit. The 60-day public petition pe-

riod will directly follow the EPA's 45-day review period. Interested parties may contact KDHE to determine if the EPA's 45-day review period has been waived.

Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided for in this notice, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. Contact Ward Burns, U.S. EPA, Region 7, Air Permitting and Compliance Branch, 11201 Renner Blvd., Lenexa, KS 66219, 913-551-7960, to determine when the 45-day EPA review period ends and the 60-day petition period commences.

Susan Mosier, M.D.
Secretary of Health
and Environment

Doc. No. 044729

State of Kansas

Department of Health and Environment

Notice of Public Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment (KDHE), Division of Environment, Bureau of Air, will conduct a public hearing at 10 a.m. Thursday, October 13, 2016, in the Azure Conference Room, fourth floor, Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed amended air quality regulations K.A.R. 28-19-11, 28-19-300 and 28-19-304. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

A summary of the proposed regulations and the estimated economic impact follows.

Summary of Regulations:

K.A.R. 28-19-11. KDHE proposes to amend K.A.R. 28-19-11 to comply with the USEPA SIP call and avoid a Federal Implementation Plan if the state does not comply. Amendments remove the authority of KDHE to declare excess emissions from a startup, shutdown, malfunction or scheduled maintenance event "not a violation" of applicable emission limitations and standards.

K.A.R. 28-19-300. KDHE proposes to amend K.A.R. 28-19-300 to implement the revised National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM_{2.5}) and to clarify and refine applicability criteria for sources subject to the Kansas Minor New Source Review (NSR) permitting program.

K.A.R. 28-19-304. KDHE proposes to amend K.A.R. 28-19-304 to update the NSR preconstruction permitting program fee structure from an estimated capital cost mechanism to one based on complexity of source and permit type. Current preconstruction permitting fees were established January 23, 1995, and have not been amended or evaluated since inception.

(continued)

Economic Impact:

The proposed amendments impose no additional costs to the implementing agency, other governmental agencies, units, or the general public.

Costs to the regulated community and consumers: Sources required to obtain a minor NSR construction approval or permit will incur a cost ranging from \$750 for an approval or \$1,000 to \$4,000 for a permit depending on the source category. If the source is required to obtain a Prevention of Significant Deterioration or Nonattainment NSR permit they will incur a cost ranging from \$3,000 to \$18,000 depending on the complexity of the project and the requirement for refined modeling.

The time period between the publication of this notice and the scheduled hearing constitutes a 60-day public comment period for the purpose of receiving written public comments on the proposed regulations. All interested parties may submit written comments prior to 5 p.m. on the day of the hearing to Douglas Watson, Chief, Air Monitoring and Planning Section, Kansas Department of Health and Environment, Bureau of Air, 1000 S.W. Jackson, Suite 310, Topeka, 66612-1366, by email to dwatson@kdheks.gov, or by fax to 785-296-7455. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulations as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit an oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding regulatory impact statements may be obtained from the KDHE Bureau of Air at <http://www.kdheks.gov/bar/planning/pnplanning.html> or by contacting Douglas Watson at dwatson@kdheks.gov, 785-296-0910 or fax 785-296-7455. Copies may also be viewed at the following locations:

- Department of Air Quality, Unified Government of Wyandotte County-Kansas City, Kansas Health Department, 619 Ann Ave., Kansas City, Kansas
- Johnson County Environmental Department, 11811 S. Sunset, Suite 2700, Olathe
- Curtis State Office Building, 1000 S.W. Jackson St., Suite 310, Topeka
- KDHE Northeast District Office, 800 W. 24th St., Lawrence
- KDHE Northwest District Office, 2301 E. 13th St., Hays
- KDHE North Central District Office, 2501 Market Place, Suite D, Salina
- KDHE South Central District Office, 130 S. Market, Suite 6050, Wichita
- KDHE Southeast District Office, 1500 W. 7th St., Chanute
- KDHE Southwest District Office, 302 W. McArtor Road, Dodge City
- Wichita-Sedgwick County Department of Community Health, 1900 E. 9th St., Wichita

Questions pertaining to the proposed regulation should be directed to Douglas Watson at the contact information above.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and the regulatory impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Douglas Watson.

Susan Mosier, M.D.
Secretary of Health
and Environment

Doc. No. 044736

State of Kansas**Board of Indigents' Defense Services****Notice on Hearing on Proposed Administrative Regulations**

A public hearing will be conducted on Tuesday, October 11, 2016, at 9 a.m. in the meeting room of the Board of Indigents' Defense Services (BIDS), Suite 500, 700 S.W. Jackson, Topeka, Kansas. The hearing is scheduled to last for 30 minutes. The hearing is to consider the adoption of proposed regulations by the Board of Indigents' Defense Services on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the proposed regulations noted below. All interested parties may submit written comments prior to the hearing to BIDS, Suite 500, 700 S.W. Jackson, Topeka, KS 66603 or by email to Pscalia@sbids.org. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to an appropriate timeframe.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made *at least one week* in advance of the hearing by contacting Beth Child at 785-296-8416. The Jayhawk Hotel building is accessible for disabled persons and accessible parking is located in front of the building. A summary of the proposed regulations and their Economic Impact follow.

Copies of the full proposed regulations and the Economic Impact Statement for the proposed regulations can be obtained at BIDS, Suite 500, 700 S.W. Jackson, Topeka, KS 66603.

K.A.R. 105-5-2, K.A.R. 105-5-3, K.A.R. 105-5-6, K.A.R. 105-5-7 and K.A.R. 105-5-8 establish the hourly rate to be paid to the private attorneys who accept court appointments to defend indigent persons in the absence of a public defender. The rate to be paid to assigned counsel is increased from \$65 per hour to \$70 per hour and each of the "caps" for the severity level of the charge is similarly increased from the "cap" at \$65 per hour to the "cap" at \$70 per hour. These amendments reflect action taken by the Board under its statutory authority to adjust

Curtis State Office Building
1000 SW Jackson St., Suite 540
Topeka, KS 66612-1367



Phone: 785-296-0461
Fax: 785-368-6368
www.kdheks.gov

Susan Mosier, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

August 15, 2016

Mr. Mark Hague
Regional Administrator
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd
Lenexa, Kansas 66219

Re: Notice of Hearing for Proposed Administrative Regulations

Dear Mr. Hague:

The Kansas Department of Health and Environment (KDHE) is proposing to amend the following Kansas Administrative Regulations (K.A.R.):

- K.A.R. 28-19-11 *Enforcement discretion due to start up, shut down, malfunctions, or scheduled maintenance.*
- K.A.R. 28-19-300 *Construction permits and approvals; applicability.*
- K.A.R. 28-19-304 *Construction permits and approvals; fees.*

The enclosed proposed regulatory action consists of the Notice of Public Hearing on Administrative Regulations, proposed amended regulations, and Regulatory Impact Statement, which includes the Environmental Benefit and Economic Impact Statements. A summary of the regulatory action is described in the Notice of Public Hearing on Administrative Regulations, which was published in the *Kansas Register* on August 11, 2016. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

As required by 40 C.F.R. 51.102(d)(3), KDHE is providing your office with the enclosed copy of the proposed regulatory action for review. The public notice provides the time and location for the hearing in Topeka, Kansas. If you have any questions concerning the proposed regulatory action, please contact Doug Watson at (785) 296-0910.

Sincerely,

Melissa McDonald
Environmental Scientist
Bureau of Air

Enclosures

cc: Mike Jay, EPA Region 7
Heather Hamilton, EPA Region 7
Lachala Kemp, EPA Region 7

Melissa McDonald

From: Melissa McDonald
Sent: Wednesday, August 17, 2016 9:16 AM
To: 'r7actionline@epa.gov'
Cc: 'Jay.Michael@epa.gov'; 'Hamilton, Heather'; 'Lachala Kemp'; Rick Brunetti; Douglas Watson; Kate Gleeson; Jason Heitman
Subject: Notice of Hearing for Proposed Administrative Regulations
Attachments: EPA_Notification_K.A.R. 28-19-11, 300, 304 Regulatory_SIP_Package.pdf

Tracking:	Recipient	Delivery
	'r7actionline@epa.gov'	
	'Jay.Michael@epa.gov'	
	'Hamilton, Heather'	
	'Lachala Kemp'	
	Rick Brunetti	Delivered: 8/17/2016 9:16 AM
	Douglas Watson	Delivered: 8/17/2016 9:16 AM
	Kate Gleeson	Delivered: 8/17/2016 9:16 AM
	Jason Heitman	Delivered: 8/17/2016 9:16 AM

Dear Mr. Hague:

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- K.A.R. 28-19-300 *Construction permits and approvals; applicability.*
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Sincerely,

Melissa McDonald
KDHE | Bureau of Air | 785.296.5610
mmcdonald@kdheks.gov

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Curtis State Office Building
1000 SW Jackson St., Suite 540
Topeka, KS 66612-1367



Phone: 785-296-0461
Fax: 785-368-6368
www.kdheks.gov

Susan Mosier, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

August 15, 2016

Ms. Kyra Moore
Director
Missouri Department of Natural Resources
Air Pollution Control Program
P.O. Box 176
Jefferson City, MO 65102

Re: Notice of Hearing for Proposed Administrative Regulations

Dear Ms. Moore:

The Kansas Department of Health and Environment (KDHE) is proposing to amend the following Kansas Administrative Regulations (K.A.R.):

- K.A.R. 28-19-11 *Enforcement discretion due to start up, shut down, malfunctions, or scheduled maintenance.*
- K.A.R. 28-19-300 *Construction permits and approvals; applicability.*
- K.A.R. 28-19-304 *Construction permits and approvals; fees.*

The enclosed proposed regulatory action consists of the Notice of Public Hearing on Administrative Regulations, proposed amended regulations, and Regulatory Impact Statement, which includes the Environmental Benefit and Economic Impact Statements. A summary of the regulatory action is described in the Notice of Public Hearing on Administrative Regulations, which was published in the *Kansas Register* on August 11, 2016. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

As required by 40 C.F.R. 51.102(d)(5), KDHE is providing your office with the enclosed copy of the proposed regulatory action for review. The public notice provides the time and location for the hearing in Topeka, Kansas. If you have any questions concerning the proposed regulatory action, please contact Doug Watson at (785) 296-0910.

Sincerely,

Melissa McDonald
Environmental Scientist
Bureau of Air

Enclosures

Melissa McDonald

From: Melissa McDonald
Sent: Wednesday, August 17, 2016 9:10 AM
To: Kyra Moore (kyra.moore@dnr.mo.gov)
Cc: Rick Brunetti; Douglas Watson; Kate Gleeson; Jason Heitman
Subject: Notice of Hearing from Proposed Administrative Regulations
Attachments: Missouri_Notification_K.A.R. 28-19-11, 300, 304 Regulatory_SIP_Package.pdf

Tracking:	Recipient	Delivery
	Kyra Moore (kyra.moore@dnr.mo.gov)	
	Rick Brunetti	Delivered: 8/17/2016 9:10 AM
	Douglas Watson	Delivered: 8/17/2016 9:10 AM
	Kate Gleeson	Delivered: 8/17/2016 9:10 AM
	Jason Heitman	Delivered: 8/17/2016 9:10 AM

Dear Ms. Moore:

The Kansas Department of Health and Environment (KDHE) is proposing to amend the following Kansas Administrative Regulations (K.A.R.):

- K.A.R. 28-19-11 *Enforcement discretion due to start up, shut down, malfunctions, or scheduled maintenance.*
- K.A.R. 28-19-300 *Construction permits and approvals; applicability.*
- K.A.R. 28-19-304 *Construction permits and approvals; fees.*

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Sincerely,

Melissa McDonald
KDHE | Bureau of Air | 785.296.5610
mmcdonald@kdheks.gov

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Melissa McDonald

From: Melissa McDonald
Sent: Monday, August 08, 2016 3:26 PM
To: Julie Coleman; Jennifer Nichols; Erich Glave; Allison Herring; Victoria O'Brien; Dan Wells; 'bandersen@wycokck.org'; 'michaelboothe@jocogov.org'; 'rowen@wichita.gov'
Cc: John Mitchell; Rick Brunetti; Kate Gleeson; Douglas Watson; Jason Heitman
Subject: K.A.R. 28-19-11, 28-19-300 and 28-19-304 Regulatory/SIP Action
Attachments: K.A.R. 28-19-11, 300, 304 Regulatory_SIP_Package.pdf

Importance: High

Tracking:

Recipient

Delivery

Julie Coleman	Delivered: 8/8/2016 3:26 PM
Jennifer Nichols	Delivered: 8/8/2016 3:26 PM
Erich Glave	Delivered: 8/8/2016 3:26 PM
Allison Herring	Delivered: 8/8/2016 3:26 PM
Victoria O'Brien	Delivered: 8/8/2016 3:26 PM
Dan Wells	Delivered: 8/8/2016 3:26 PM
'bandersen@wycokck.org'	
'michaelboothe@jocogov.org'	
'rowen@wichita.gov'	
John Mitchell	Delivered: 8/8/2016 3:26 PM
Rick Brunetti	Delivered: 8/8/2016 3:26 PM
Kate Gleeson	Delivered: 8/8/2016 3:26 PM
Douglas Watson	Delivered: 8/8/2016 3:26 PM
Jason Heitman	Delivered: 8/8/2016 3:26 PM

The Kansas Department of Health and Environment is proposing to amend the following Kansas Administrative Regulations (K.A.R.):

- K.A.R. 28-19-11 *Start up shut down and malfunction*
- K.A.R. 28-19-300 *Construction permits and approvals; applicability*
- K.A.R. 28-19-304 *Construction permits and approvals; fees.*

The attached proposed regulatory action consists of the Notice of Public Hearing on Administrative Regulations, proposed amended regulations, and Regulatory Impact Statement, which includes the Environmental Benefit and Economic Impact Statements. A summary of the regulatory action is described in the Notice of Public Hearing on Administrative Regulations, which will be published in the *Kansas Register* on August 11, 2016. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

As required by 40 C.F.R. 51.102(d)(2), we are providing your office with the attached copy of the proposed regulatory action to be available to the public for review. The public notice provides the time and location for the hearing in Topeka, Kansas. If you have any questions concerning the proposed regulatory action, please contact Doug Watson at (785) 296-0910.

Thank you,

Melissa McDonald

KDHE | Bureau of Air | 785.296.5610

mmcdonald@kdheks.gov

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Melissa McDonald

From: Melissa McDonald
Sent: Monday, August 08, 2016 3:32 PM
To: 'michael.booth@jocogov.org'
Subject: FW: K.A.R. 28-19-11, 28-19-300 and 28-19-304 Regulatory/SIP Action
Attachments: K.A.R. 28-19-11, 300, 304 Regulatory_SIP_Package.pdf

Importance: High

Melissa McDonald
KDHE | Bureau of Air | 785.296.5610
mmcdonald@kdheks.gov

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From: Melissa McDonald
Sent: Monday, August 08, 2016 3:26 PM
To: Julie Coleman <jcoleman@kdheks.gov>; Jennifer Nichols <JNichols@kdheks.gov>; Erich Glave <EGlave@kdheks.gov>; Allison Herring <AHerring@kdheks.gov>; Victoria O'Brien <vobrien@kdheks.gov>; Dan Wells <dwells@kdheks.gov>; 'bandersen@wycokck.org' <bandersen@wycokck.org>; 'michaelbooth@jocogov.org' <michaelbooth@jocogov.org>; 'rowen@wichita.gov' <rowen@wichita.gov>
Cc: John Mitchell <jmitchell@kdheks.gov>; Rick Brunetti <rbrunetti@kdheks.gov>; Kate Gleeson <KGleeson@kdheks.gov>; Douglas Watson <dwatson@kdheks.gov>; Jason Heitman <jheitman@kdheks.gov>
Subject: K.A.R. 28-19-11, 28-19-300 and 28-19-304 Regulatory/SIP Action
Importance: High

The Kansas Department of Health and Environment is proposing to amend the following Kansas Administrative Regulations (K.A.R.):

- K.A.R. 28-19-11 *Start up shut down and malfunction*
- K.A.R. 28-19-300 *Construction permits and approvals; applicability*
- K.A.R. 28-19-304 *Construction permits and approvals; fees.*

The attached proposed regulatory action consists of the Notice of Public Hearing on Administrative Regulations, proposed amended regulations, and Regulatory Impact Statement, which includes the Environmental Benefit and Economic Impact Statements. A summary of the regulatory action is described in the Notice of Public Hearing on Administrative Regulations, which will be published in the *Kansas Register* on August 11, 2016. Upon adoption of these proposed amended regulations, KDHE will submit these regulations to the U.S. Environmental Protection Agency (USEPA) for approval into the State Implementation Plan (SIP).

As required by 40 C.F.R. 51.102(d)(2), we are providing your office with the attached copy of the proposed regulatory action to be available to the public for review. The public notice provides the time and location for the

hearing in Topeka, Kansas. If you have any questions concerning the proposed regulatory action, please contact Doug Watson at (785) 296-0910.

Thank you,

Melissa McDonald
KDHE | Bureau of Air | 785.296.5610
mmcdonald@kdheks.gov

The information contained in this message and any attachment may be proprietary, confidential, and privileged or subject to the work product doctrine and thus protected from disclosure. If the reader of this message is not the intended recipient, or an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify me immediately by replying to this message and deleting it and all copies and backups thereof. Thank You.

Susan Vogel

From: Susan Vogel
Sent: Friday, August 12, 2016 12:32 PM
To: 'dwhiteman@kasb.org'
Subject: Consultation Regarding Adoption of KDHE Proposed Regulations
Attachments: KAR 28-19-11, 28-19-300, 28-19-304.pdf; Regulatory Impact Statements KAR 28-19-11, 28-19-300, 28-19-304.pdf; Notice of Hearing for KAR 28-19-11, 28-19-300, 28-19-304.pdf

As required by KSA 2015 Supp. 77-416, the Kansas Department of Health and Environment (KDHE) is providing the Kansas Association of School Boards with the following attached documents for KAR 28-19-11, 28-19-300 and 28-19-304, proposed amended air quality regulations. This information is provided for your review and consideration for comment:

- 1) Proposed Regulations
- 2) Regulatory Impact Statement for each regulation
- 3) Notice of Hearing as published in the *Kansas Register*

As stated in the Notice of Hearing, written comment regarding the proposed regulations may be submitted to Douglas Watson, Chief, Air Monitoring and Planning Section, KDHE, Bureau of Air, 1000 SW Jackson, Suite 310, Topeka KS 66612-1366, by email to dwatson@kdheks.gov, or by fax to 785-296-7455. Questions regarding the proposed regulations may also be directed to Douglas Watson.

Also as stated in the Notice of Hearing, written comment and oral comment may be presented or submitted at the public hearing on Thursday, October 13, 2016. Comment must be received by 5:00 pm on the day of the public hearing to be considered by KDHE and included as public comment in the administrative record of these regulations.

Thank you for consideration of the proposed regulations for comment.

Susan Vogel
Public Service Administrator
Office of Legal Services
785-296-1291
svogel@kdheks.gov

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Susan Vogel

From: Susan Vogel
Sent: Friday, August 12, 2016 12:21 PM
To: 'lbaer@lkm.org'
Subject: Consultation Regarding Adoption of KDHE Proposed Regulations
Attachments: KAR 28-19-11, 28-19-300, 28-19-304.pdf; Regulatory Impact Statements KAR 28-19-11, 28-19-300, 28-19-304.pdf; Notice of Hearing for KAR 28-19-11, 28-19-300, 28-19-304.pdf

As required by KSA 2015 Supp. 77-416, the Kansas Department of Health and Environment (KDHE) is providing the League of Kansas Municipalities with the following attached documents for KAR 28-19-11, 28-19-300 and 28-19-304, proposed amended air quality regulations. This information is provided for your review and consideration for comment:

- 1) Proposed Regulations
- 2) Regulatory Impact Statement for each regulation
- 3) Notice of Hearing as published in the *Kansas Register*

As stated in the Notice of Hearing, written comment regarding the proposed regulations may be submitted to Douglas Watson, Chief, Air Monitoring and Planning Section, KDHE, Bureau of Air, 1000 SW Jackson, Suite 310, Topeka KS 66612-1366, by email to dwatson@kdheks.gov, or by fax to 785-296-7455. Questions regarding the proposed regulations may also be directed to Douglas Watson.

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Susan Vogel
Public Service Administrator
Office of Legal Services
785-296-1291
svogel@kdheks.gov

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Susan Vogel

From: Susan Vogel
Sent: Friday, August 12, 2016 11:57 AM
To: 'wangemann@kansascountries.org'
Subject: Consultation Regarding Adoption of KDHE Proposed Regulations
Attachments: KAR 28-19-11, 28-19-300, 28-19-304.pdf; Regulatory Impact Statements KAR 28-19-11, 28-19-300, 28-19-304.pdf; Notice of Hearing for KAR 28-19-11, 28-19-300, 28-19-304.pdf

As required by KSA 2015 Supp. 77-416, the Kansas Department of Health and Environment (KDHE) is providing the Kansas Association of Counties with the following attached documents for KAR 28-19-11, 28-19-300 and 28-19-304, proposed amended air quality regulations. This information is provided for your review and consideration for comment:

- 1) Proposed Regulations
- 2) Regulatory Impact Statement for each regulation
- 3) Notice of Hearing as published in the *Kansas Register*

As stated in the Notice of Hearing, written comment regarding the proposed regulations may be submitted to Douglas Watson, Chief, Air Monitoring and Planning Section, KDHE, Bureau of Air, 1000 SW Jackson, Suite 310, Topeka KS 66612-1366, by email to dwatson@kdheks.gov, or by fax to 785-296-7455. Questions regarding the proposed regulations may also be directed to Douglas Watson.

Also as stated in the Notice of Hearing, written comment and oral comment may be presented or submitted at the public hearing on Thursday, October 13, 2016. Comment must be received by 5:00 pm on the day of the public hearing to be considered by KDHE and included as public comment in the administrative record of these regulations.

Thank you for consideration of the proposed regulations for comment.

Susan Vogel
Public Service Administrator
Office of Legal Services
785-296-1291
svogel@kdheks.gov

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Department of Health
and Environment

Sam Brownback, Governor

Susan Mesier, MD, Secretary

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B of A - Planning Public Notices



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Public Notices



Proposed Planning Public Notices

- Public Notice: Proposed Amendments to K.A.R. 28-19-11, 28-19-300 and 28-19-304
 - Proposed K.A.R. 28-19-11
 - K.A.R. 28-19-11 Regulatory Impact Statement
 - Proposed K.A.R. 28-19-300
 - K.A.R. 28-19-300 Regulatory Impact Statement
 - Proposed K.A.R. 28-19-304
 - K.A.R. 28-19-304 Regulatory Impact Statement

Planning Post Public Notices

- State Implementation Plan Regional Haze with 2014 Five-Year Progress Report
- Proposed Revision of the State Implementation Plan - Compliance with Sec. 128 of Federal Clean Air Act
- Kansas State Implementation Plan - Regional Haze - Submitted to EPA
 - 1.1 Guide to Locating 40 CFR § 51.308 Requirements
 - 1.2 EPA Checklist for Regional Haze SIPs Submitted Under 40 CFR 51.308
 - 2.1 Summary of Legal Authority, Public Participation Process, Public Comments and Responses
 - 4.1 Summary of Federal Land Manager Comments and Responses
 - 4.2 US Department of the Interior Comments on the Kansas Regional Haze SIP
 - 4.3 US Department of Agriculture Comments on the Kansas Regional Haze SIP
 - 7.1 2002 Emissions Inventory
 - 7.2 2018 Emissions Inventory
 - 7.3 Emissions Inventory Technical Documentation
 - 7.4 Natural Gas Production Trends
 - 8.1 Emissions Modeling TSD Chapter 2

- [8.2 Model Performance Evaluation TSD Chapter 3](#)
- [8.3 Additional Supporting Analysis TSD Chapter 5](#)
- [9.1 Identification of BART-Eligible Sources in the State of Kansas](#)
- [9.2 Modeling Protocol Used to Determine Subject-to-BART Sources](#)
- [9.3 Results of Modeling to Identify Sources Subject to BART](#)
- [9.4 Guidance for Facilities Conducting a BART Analysis](#)
- [9.5 BART Analysis for KCP&L - La Cygne Units 1 and 2](#)
- [9.6 BART Analysis for Westar - Gordon Evans Unit 2 & Jeffrey Units 1 & 2 \(incl May 2009 addendum for GEEC\)](#)
- [9.7 BART Agreements](#)
- [9.8 BART Exemption modeling](#)
- [10.1 PSAT Tool-Generated Tables](#)
- [10.2 2018 Visibility Projections for CENRAP Class I Areas \(TSD Appendix D\)](#)
- [10.3 Calculations for Emission Reductions for Kansas Reasonable Progress Goals](#)
- [10.4 Kansas Prescribed Fire Emissions](#)
- [11.1 Sunflower Visibility Analysis Performed by KDHE](#)
- [11.2 Holcomb Class I Visibility Modeling Report](#)

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Curtis State Office Building, 1000 SW Jackson, Topeka, Kansas 66612

SECTION G:
TECHNICAL SUPPORT DOCUMENTS

Technical Support: K.A.R. 28-19-11
(Response to Elements of 40 C.F.R. Part 51, Appendix V, Section 2.2)

1. Identification of all regulated pollutants affected by the plan. [2.2(a)]

This plan revision incorporated amendments to Kansas Administrative Regulation (K.A.R.) 28-19- 11 *Enforcement discretion due to start up, shut down, malfunctions, or scheduled maintenance*. This SIP revision will have a negligible effect on regulated air pollutants.

2. Identification of the location of affected sources including the EPA attainment/nonattainment designation of the locations and the status of the attainment plan for the affected areas. [2.2(b)]

K.A.R. 28-19-11 applies to all sources in the state regardless of location. As codified at [40 C.F.R. §81.317](#) and as amended by the July 12, 2016 *Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard—Round 2 Final Rule* [[81 FR 45048](#)], all areas in Kansas are designated as “attainment” or “unclassifiable/attainment” or “unclassifiable” or “better than national standards” or “cannot be classified” or “cannot be classified or better than national standards” for all NAAQS with the following exception:

- **Ozone (1-Hour Standard)** – The 1-hour ozone standard is revoked effective June 15, 2005 for all areas in Kansas. The Kansas City area is a maintenance area for the 1-hour NAAQS for the purposes of [40 C.F.R. part 51 subpart X](#).
- **2008 Lead** – Saline County (part) – Area bounded by Schilling Rd. on the north, ¼ mile west of S. Ohio St. on the east, Water Well Rd. on the south, and 9th Street on the west is designated “nonattainment.”

3. Quantification of the changes in plan allowable emissions from the affected sources; estimates of changes in current actual emissions from affected sources or, where appropriate, quantification of changes in actual emissions from affected sources through calculations of the differences between certain baseline levels and allowable emissions anticipated as a result of the revision. [2.2(c)]

Not applicable. The amendments to K.A.R. 28-19-11 will not result in any quantifiable changes to allowable or actual emissions from affected sources.

4. The State’s demonstration that the national ambient air quality standards, prevention of significant deterioration increments, reasonable further progress demonstration, and visibility, as applicable, are protected if the plan is approved and implemented. [2.2(d)]

The air quality of Kansas will continue to be protected with the amended regulation. This plan, as revised, will continue to be protective of the NAAQS in Kansas.

- 5. Modeling information required to support the proposed revision, including input data, output data, models used, justification of model selections, ambient monitoring data used, meteorological data used, justification for use of offsite data (where used), modes of models used, assumptions, and other information relevant to the determination of adequacy of the modeling analysis. [2.2(e)]**

Not applicable.

- 6. Evidence, where necessary, that emission limitations are based on continuous emission reduction technology. [2.2(f)]**

Not applicable

- 7. Evidence that the plan contains emissions limitations, work practice standards and recordkeeping/reporting requirements, where necessary, to ensure emission levels. [2.2(g)]**

Not applicable

- 8. Compliance/enforcement strategies, including how compliance will be determined in practice. [2.2(h)]**

There are no changes to the compliance and enforcement strategies. The existing mechanisms remain in place.

- 9. Special economic and technological justifications required by any applicable EPA policies, or an explanation of why such justifications are not necessary. [2.2(i)]**

Not applicable. The Plan as revised will continue to be protective of the NAAQS in the State.



Division of Environment
Bureau of Air

REGULATORY IMPACT STATEMENT CONSISTING OF:

I. ENVIRONMENTAL BENEFIT STATEMENT
AND
II. ECONOMIC IMPACT STATEMENT

Pursuant to K.S.A. 77-416

**PROPOSED REVISED PERMANENT AIR QUALITY REGULATION:
K.A.R. 28-19-11**

August 2016

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Background of Proposed Amendments

The CAA (section 110(k)(5)) provides a mechanism commonly called a "SIP call" for correcting state implementation plans that the Administrator finds to be substantially inadequate to meet CAA requirements.

Exemptions from emission limits during periods of startup, shutdown and malfunction (SSM) exist in a number of state rules, some of which were adopted and approved into SIPs by the EPA many years ago.

Recent court decisions have held that under the CAA, such exemptions are not allowed in SIPs. Other court decisions have remanded similar exemptions in National Emissions Standards for Hazardous Air Pollutants (NESHAP), which the EPA is also correcting in separate actions.

On February 12, 2013, the EPA proposed to:

- deny the request in the Petition that EPA prohibit affirmative defenses in SIPs.
- grant the Petitioner's claim for 36 of the 39 states identified in the Petition, by proposing to determine that these 36 states have approved SIPs that include one or more SSM provision that is inconsistent with the CAA. EPA proposed a "SIP Call" for each of those 36 states.
- deny the request in the Petition that EPA discontinue reliance on interpretive letters from states to clarify any potential ambiguity in the state's SIP submission.

Subsequent to the February 2013 proposal, on April 18, 2014, the U.S. Court of Appeals for the D.C. Circuit issued its decision in *NRDC v. EPA*, 749 F.3d 1055 (D.C. Cir. 2014). The court evaluated the legal validity of an affirmative defense provision in

the EPA's NESHAP for the manufacturers of Portland cement. In the court's opinion, affirmative defense provisions in the EPA's own regulations cannot be applicable to violations of CAA requirements. The EPA extended the logic of the court's decision to SIP provisions and revised its SSM policy on approvability of affirmative defense provisions in SIPs.

The EPA issued a supplemental proposal in September 2014 to reflect the court's opinion that affirmative defense provisions cannot be applicable to violations of CAA requirements. In the supplemental proposal, the EPA revised what it proposed in February 2013 with respect to affirmative defense provisions and it proposed SIP calls for affirmative defense provisions in additional states.

On May 22, 2015, the U.S. Environmental Protection Agency (EPA) issued a final action to ensure states have plans in place that are fully consistent with the Clean Air Act and recent court decisions concerning startup, shutdown and malfunction (SSM) operations. Air pollution emitted during these periods may adversely affect the health of people in neighboring and downwind communities.

This action responds to a petition for rulemaking filed by the Sierra Club by addressing outdated provisions in State Implementation Plans (SIPs), improving national consistency and providing clarity for the treatment of emissions that occur during startup, shutdown and malfunction (SSM).

This final action specifically: responds to the Sierra Club Petition; 2. clarifies the EPA's SSM Policy to assure consistency with the Clean Air Act and recent court decisions; and 3. finalizes the Administrator's findings that the SSM provisions in the SIPs of 36 states (applicable in 45 statewide and local jurisdictions and no tribal areas) do

not meet the requirements of the Clean Air Act (CAA) and accordingly issues a “SIP call” for each of those states.

In issuing the SIP call action, the EPA directs the affected states to correct specific SSM provisions in their SIPs. The Clean Air Act allows a maximum of 18 months from the issuance of the final action to submit a SIP revision. The SIP submission deadline for each of the 36 states subject to the SIP call action is November 22, 2016.

This Regulatory Impact Statement, consisting of an Environmental Benefit Statement and Economic Impact Statement, is submitted in support of the proposed amendments.

Regulation Description

The proposed revised K.A.R. 28-19-11, once a final regulation and incorporated in a State Implementation Plan Revision submittal to EPA, removes the authority of KDHE to declare an SSM event “not a violation”. Therefore, while KDHE can still choose to not pursue an enforcement action for an SSM event, the owner or operator of the emission source that experienced the SSM event could still be susceptible to enforcement by the EPA or citizen lawsuits.

I. Environmental Benefit Statement

1) Need for proposed amendments and environmental benefit likely to accrue.

a) Need

These amendments are mandatory in order to comply with the EPA SIP Call and avoid a Federal Implementation Plan that would be placed on the State by the EPA if the State does not comply.

b) Environmental benefit

Emissions from startup, shutdown and malfunction events should not significantly change as a result of amendments to this regulation. These amendments only lessen the amount of protection from enforcement that the department can provide emission sources.

2) When applicable, a summary of the research indicating the level of risk to the public health or the environment being removed or controlled by the proposed rules and regulations or amendment.

Not applicable. These amendments will have a negligible effect on air emissions in the State.

3) If specific contaminants are to be controlled by the proposed regulations or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.

These amendments do not control specific contaminants. These amendments only remove the authority of the department to protect sources experiencing SSM events from EPA enforcement or citizen lawsuits.

II. Economic Benefit Statement

1) Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?

No. This is not relevant to this proposed regulation in any fashion.

2) Do the proposed amendments exceed the requirements of applicable Federal law?

No. The proposed revised K.A.R. 28-19-11 does not exceed requirements of applicable federal law.

3) Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:

a) Capital and annual costs of compliance with the proposed amendments and the persons who will bear those costs.

The proposed amendments impose no new capital costs to the implementing agency or to the general public.

b) Initial and annual costs of implementing and enforcing the proposed amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.

There are no initial or annual costs associated with the implementation and enforcement of the proposed amendments.

c) Costs which would likely accrue if the proposed regulations are not adopted, the persons who will bear the costs and those who will be affected by the failure to adopt the regulations.

The costs that would likely accrue if the proposed regulations are not adopted would be those associated with the requirements established by a Federal Implementation Plan put into place by the EPA. A Federal Implementation Plan could require more reporting of SSM events than the department's proposed amendments, therefore likely increasing costs to the department and industry.

d) A detailed statement of the data and methodology used in estimating the costs used in the statement.

Not applicable.

e) Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.

No less costly or intrusive method was identified in the process of developing the proposed amendments.

f) Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.

Copies of the regulation, the regulatory impact statement, and the notice of hearing will be provided electronically to these organizations at the time of publication of the Notice of Hearing in the *Kansas Register*.